

No. 1564

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**United States Circuit Court of Appeals**

FOR THE NINTH CIRCUIT.

ELIZABETH DECKER,

Appellant,

vs.

THE PACIFIC COAST STEAMSHIP COMPANY,  
a Corporation,

Appellee.

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**TRANSCRIPT OF RECORD.**

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Upon Appeal from the United States District  
Court for the District of Alaska,  
Division No. 1.

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**FILED**

APR 14 1908



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## I N D E X.

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	Page
Addresses and Names of Attorneys of Record . . .	1
Amendments to Findings of Fact, etc., Plaintiff's Proposed . . . . .	27
Answer of Pacific Coast Steamship Co. . . . .	9
Answer of Pacific Coast Steamship Co., Plaintiff's Reply to . . . . .	15
Appeal, Bond on . . . . .	106
Appeal, Notice of . . . . .	105
Appeal, Order Allowing . . . . .	104
Appeal, Petition for . . . . .	102
Assignment of Errors . . . . .	98
Bill of Exceptions and Staying Execution, Order Extending Time for Filing, and Settling During Said Time . . . . .	36
Bill of Exceptions and Staying Execution, Order Extending Time for Serving and Filing . . . . .	37
Bill of Exceptions, Certificate to . . . . .	96
Bill of Exceptions, etc., Order Extending Time to Settle and File . . . . .	38
Bill of Exceptions, Plaintiff's Proposed . . . . .	39
Bond on Appeal . . . . .	106
Certificate, Clerk's, to Transcript of Record . . .	111
Certificate to Bill of Exceptions . . . . .	96
Citation (Original) . . . . .	109
Clerk's Certificate to Transcript of Record . . .	111
Complaint, Summons on . . . . .	6

Index.	Page
Complaint to Abate a Private Nuisance.....	3
Conclusions of Law of District Court, Findings of Fact and .....	29
Conclusions of Law, Plaintiff's Proposed Find- ings of Fact and .....	24
Deed Dated February 20, 1897—Edward O. Decker et ux. to Jay M. Decker et al.....	55
Deed Dated October 1, 1898—Thomas R. Lyons, as Trustee, to Jay Decker et al.....	40
Default of Defendant John Johnston, Plain- tiff's Demand for Entry of .....	8
Defendant's Exhibit "B" (Articles of Incor- poration of the People's Wharf Company). . . . .	59
Defendant's Exhibit "C" (Deed Dated Febru- ary 20, 1897, from the People's Wharf Com- pany (a Corporation), to John I. Water- bury and T. Jefferson Coolidge, Jr.).....	63
Defendant's Exhibit "D" (Continued)—Deed Dated April 1, 1898, from John I. Water- bury and T. Jefferson Coolidge, Jr., to the Pacific Coast Company (a Corporation)..	69
Demand, Plaintiff's, for Entry of Default of De- fendant, John Johnston .....	8
Exceptions, Bill of, and Staying Execution Dur- ing Said Time, Order Extending Time for Filing and Settling .....	36
Exceptions, Bill of, and Staying Execution, Or- der Extending Time for Serving and Fil- ing .....	37

Exceptions, Bill of, etc., Order Extending Time to Settle and File .....	38
Exceptions, Certificate to Bill of .....	96
Exceptions, Plaintiff's Proposed Bill of .....	39
Exhibit No. 2, Plaintiff's (Trustee's Deed Dated October 1, 1898, from Thomas R. Lyons to J. M. and E. O. Decker) .....	44
Exhibit No. 3, Plaintiff's (Deed Dated January 11, 1904, from J. M. Decker and Rosalie Decker to John Johnston) .....	47
Exhibit "B," Defendant's (Articles of Incorporation of the People's Wharf Company) .	59
Exhibit "C," Defendant's (Deed Dated February 20, 1897, from the People's Wharf Com- pany (a Corporation) to John I. Water- bury and T. Jefferson Coolidge, Jr.) .....	63
Exhibit "D," Defendant's (Continued)—Deed Dated April 1, 1898, from John I. Water- bury and T. Jefferson Coolidge, Jr., to the Pacific Coast Company (a Corporation) . . .	69
Findings of Fact and Conclusions of Law of Dis- trict Court .....	29
Findings of Fact and Conclusions of Law, Plain- tiff's Proposed .....	24
Findings of Fact, etc., Plaintiff's Proposed Amendments to .....	27
Judgment .....	34
Map (Attached to Defendant's Exhibit "D") . .	68
Names and Addresses of Attorneys of Record . .	1
Notice of Appeal .....	105

Index.	Page
Opinion of District Court .....	18
Order Allowing Appeal .....	104
Order Extending Time for Filing and Settling Bill of Exceptions and Staying Execution During Said Time .....	36
Order Extending Time for Serving and Filing Bill of Exceptions and Staying Execution..	37
Order Extending Time to Settle and File Bill of Exceptions, etc.....	38
Petition for Appeal .....	102
Plaintiff's Demand for Entry of Default of De- fendant, John Johnston .....	8
Plaintiff's Exhibit No. 2 (Trustee's Deed Dated October 1, 1898, from Thomas R. Lyons to J. M. and E. O. Decker) .....	44
Plaintiff's Exhibit No. 3 (Deed Dated January 11, 1904, from J. M. Decker and Rosalie Decker to John Johnston).....	47
Plaintiff's Objection, Exceptions, etc.....	95
Plaintiff's Proposed Amendments to Findings of Fact, etc.....	27
Plaintiff's Proposed Bill of Exceptions.....	39
Plaintiff's Proposed Findings of Fact and Con- clusions of Law .....	24
Plaintiff's Reply to Answer of Pacific Coast Steamship Co.....	15
Praeceptum for Transcript of Record.....	1
Proposed, Amendments to Findings of Fact, etc., Plaintiff's .....	27
Proposed, Bill of Exceptions, Plaintiff's.....	39



Index.	Page
Proposed, Findings of Fact and Conclusions of Law, Plaintiff's .....	24
Record, Clerk's Certificate to Transcript of....	111
Record, Praecept for Transcript of .....	1
Reply, Plaintiff's, to Answer of Pacific Coast Steamship Co.....	15
Summons on Complaint .....	6
Testimony on Behalf of Plaintiff:	
Elizabeth Decker (recalled—in rebuttal)..	91
Elizabeth Decker (in rebuttal—cross-exam- ination) .....	94
Testimony on Behalf of Defendant:	
W. F. Swan .....	80
W. F. Swan (cross-examination).....	84
Transcript of Record, Clerk's Certificate to....	111
Transcript of Record, Praecept for.....	1



**Names and Addresses of Attorneys of Record.**  
ELIZABETH DECKER,

Plaintiff and Appellant,  
E. M. BARNES, Juneau, Alaska.

vs.

PACIFIC COAST STEAMSHIP COMPANY (a  
Corporation), and JOHN JOHNSTON,  
Defendants and Appellees,  
SHACKELFORD & LYONS, Juneau, Alaska.

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*In the District Court for Alaska, Division No. 1, at  
Juneau.*

No. 477-A.

ELIZABETH DECKER,

vs.

PACIFIC COAST STEAMSHIP COMPANY (a  
Corporation), et al.

**Praeceptum for Transcript of Record.**

To C. C. Page, Clerk of the above-named court.

Dear Sir: Will you please send to the Clerk of the  
U. S. Circuit Court of Appeals for the 9th Circuit  
at San Francisco, Calif., in the above-entitled suit,  
copies of the following files in said suit.

This *praecipit*

- 1 Complaint
- 2 Summons
- 3 Demands for default

- ~~4~~ ~~Default of *deft* Johnstone~~
- 5 Answer
- 6 Replication
- 7 Memorandum of decision
- 8 Findings requested by *plff*
- 9 Proposed additional findings
- 10 Findings of fact and conclusions of law
- 11 Judgement
- 12 Order of *Jany* 11th, 1907, extending time for filing bill of exceptions
- 13 *Samd* order dated June 24, 1907
- 14 Same order dated *Oct* 1st, 1907.
- 15 Bill of exceptions
- 16 Assignment of errors
- 17 Petition for appeal
- 18 Order allowing appeal
- 19 Notice of appeal
- 20 Bond on appeal
- 21 Citation

Respectfully,

E. M. BARNES,  
Attorney for plaintiff.

(Indorsed.) No. 477-A. In the District Court for Alaska, Division No. 1, at Juneau. Elizabeth Decker, plaintiff, vs. Pacific Coast Steamship Co., et al, Defendant. *Precipe.* E. M. Barnes, attorney for  
Office: Juneau, Alaska, rooms 1 and 2 Valentine Building. Filed *Jan* 9, 1908. C. C. Page, Clerk, by R. E. Robertson, Asst.

*In the United States District Court in and for the  
District of Alaska Division No. 1, at Juneau.*

ELIZABETH DECKER,

vs.

PACIFIC COAST STEAMSHIP COMPANY (a  
Corporation) and JOHN JOHNSTON.

**Complaint to Abate a Private Nuisance.**

And now comes *plff* and for cause of action against  
*defts* alleges:

I.

That *deft* John Johnston is equally *intereste* with  
*plff* herein but refuses to join with *plff* herein; there-  
fore she makes him a *deft* herein.

II.

That said *deft* Pacific Coast Steamship Co. is a cor-  
poration duly incorporated, and doing business in  
Alaska under and by virtue of the laws thereof, and  
at all the times herein named has so been.

III.

That at all said times *plff* and said John Johnston  
and his grantors have been and now are the owners  
in fee simple of block L. of the Town of Juneau,  
Alaska, according to the recorded map or plat thereof,  
of record in the *Recorders* office at Juneau, Alaska.

IV.

That said premises abutt on the waters of Gasting-  
eaux Channel at mean high tide, and against which  
premises the tide regularly ebbs and flows twice in  
twenty-four hours.

## V.

That in front of said premises and between said premises and deep water the *deft* corporation now maintains and for more than two years last passed has maintained buildings and a wharf.

## VI.

That to continue to maintain said buildings and said wharf said *deft will*, to *plffs* irreparable damage unless said buildings and wharf are abated by this Honorable Court.

## VII.

That by the erection and *maintainence* of said buildings and said wharf by said *deft* corporation as aforesaid *plff* and her cotenant have been during all of said time, and now are and will continue to be during the *maintainence* of said wharf and buildings as aforesaid, by said *deft* corporation, as aforesaid, deprived of their right, and prevented from wharfing out or maintaining a wharf in front of their said premises, and prevented from access to deep water or at all from their abutting premises herein above described, which is a private, direct, irreparable and material damage to this *plff* and her said cotenant, and they thereby have been now damaged in the sum of one thousand *Dollars*.

## VIII.

That the said *maintainence* of said wharf and buildings by said *deft* corporation as aforesaid is a private nuisance to *plff* and her said cotenant.

## IX.

That said buildings are known as the Union Iron

Works and the said wharf is between them and the deep water above named.

X.

Wherefore *plff* prays judgement against said *deft* corporation for herself and her said cotenant in the sum of one thousand dollars, and for her costs and disbursements and that said buildings and wharf be declared to be a private nuisance to *plff* and her cotenant, and that the same be abated.

E. M. BARNES

*Atty* for Plaintiff.

United States of America,  
District of Alaska,—ss.

I, Elizabeth Decker being first duly sworn on oath say: That I am the *Plff* in the above entitled action; that I have read the foregoing and know the contents thereof, and believe the same to be true;

~~(Signed)~~ ELIZABETH DECKER.

Subscribed and sworn to before me this 14th day of *Sept* 1905.

[Notarial Seal]

~~(Signed)~~

L. B. FRANCIS,

Notary Public for Alaska.

[Endorsed]: No. 477-A. In the United States District Court for the District of Alaska, Division No. 1. Elizabeth Decker Plaintiff vs. Pacific Coast Steamship Co., et al., Defendants. Complaint to Abate a Private Nuisance Filed *Sep* 15, 1905. C. C. Page, Clerk, J. J. Clarke, Deputy. E. M. Barnes Attorney for *Plff* Office: Juneau, Alaska, Valentine Bldg.

*In the United States District Court for the District  
of Alaska, Division No. 1.*

No. 477-A.

ELIZABETH DECKER,

Plaintiff,

vs.

PACIFIC COAST STEAMSHIP COMPANY (a  
Corporation),

Defendant

**Summons on Complaint.**

To Pacific Coast Steamship Co., a Corporation, and  
John Johnston *Defendant*— Greeting:

In the Name of the United States of America.  
You are hereby commanded to be and appear in the  
above entitled Court, holden at Juneau in said Divi-  
sion of said District, and answer the complaint filed  
against you in the above entitled action within thirty  
days from the date of the service of this summons and  
a copy of the said complaint upon you, and if you  
fail so to appear and answer, for want thereof the  
plaintiff will take judgment against you for the sum  
specified will apply to the Court for the re-  
lief demanded in said complaint, direct *Jmt* against  
*deft* corporation for \$1000 damages, *plffs* costs and  
disbursements and abatement of a private nuisance  
a copy of which is served herewith.

And you, the United States Marshall of Division  
No. 1, of the District of Alaska, or any Deputy are  
hereby required to make service of this summons



upon the said defendant and each of them as by law required and you will make due return hereof to the Clerk of the Court within forty days from the date of delivery to you with an indorsement hereon of your doings in the premises.

In Witness whereof I have hereunto set my hand and affixed the Seal of the above Court this 15th day of Sept. A. D., 1905.

(Court Seal)

C. C. PAGE,  
Clerk.

By J. J. Clarke,  
Deputy.

United States of America,  
Dist. of Alaska, Div. No. 1,—ss.

I hereby certify that I received the within Summons on Sept. 15, 1905, and served the same on Sept. 16, 1905, on the within named Deft. The Pacific Coast Steamship Company, a corporation, by delivering a copy thereof, together with a copy of the complaint in said action, prepared and certified by E. M. Barnes, Atty. for the within named plff., to W. F. Swan, (personally and in person), agent of the said Pacific Coast Steamship Co., a corp. I further certify that the President or other head of the corporation, secretary, cashier, or managing agent, of the said corporation do not reside or have an office within this First Division, District of Alaska. I further certify that I was directed by E. M. Barnes, Esq., atty. for Plff. herein to serve this Summons upon the said W. F. Swan, as agent of the said Deft. Company.

I further certify that I, at the same time and place, further served the said summons, by delivering a copy thereof, together with a copy of the complaint in said action prepared and certified by E. M. Barnes, Atty. for Plff. to the within named Deft. John Johnston, personally and in person.

Dated Juneau, Alaska, Sept. 18, 1905.

Marshal's Costs, \$6. Pd. by Plff.

JAMES M. SHOUP,  
U. S. Marshal.  
By J. B. Heyburn,  
Deputy.

[Endorsed]: No. 477-A. In the District Court of the United States for the District of Alaska, Division No. 1. Elizabeth Decker vs. Pacific Coast Steamship Co., a Corporation et al Summons. Filed *Sep.* 18, 1905. C. C. Page, Clerk, By J. J. Clarke, Deputy Clerk.

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*District Court for the District of Alaska, Division  
No. 1, At Juneau.*

No. 477.

ELIZABETH DECKER

vs.

THE PACIFIC COAST STEAMSHIP CO. (a Corporation), and JOHN JOHNSTON.

**Plaintiff's Demand for Entry of Default of Defendant John Johnston.**

Whereas in the above cause the *deft* John Johnston has been regularly served with summons, and

Whereas the time for answering the same has fully expired and whereas the time for answering the same has not been extended by this Court or the Judge thereof and

Whereas the said defendant John Johnston has wholly failed to appear or answer said complaint—

Now therefore comes the *plff* and files this application in writing for the entry of the default of the defendant herein.

~~(Signed.)~~

E. M. BARNES,  
*Atty* for *plff*.

[Endorsed]: No. 477. District Court, For the District of Alaska. Division No. 1. at Juneau Elizabeth Decker Plaintiff vs. The Pacific Coast steamship Co. and John Johnston Defendants Demand for default. Filed Dec. 8, 1905. C. C. Page Clerk, By D. C. Abrams Deputy. E. M. Barnes Attorney for *Plff*. office: Juneau, Alaska, Valentine Bldg.

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*In the District Court for the District of Alaska, Division No. 1, At Juneau.*

No. 477-A.

ELIZABETH DECKER,

Plaintiff,

v.

PACIFIC COAST STEAMSHIP COMPANY (a Corporation), and JOHN JOHNSTON,

Defendants.

**Answer of Pacific Coast Steamship Co.**

Comes now the Pacific Coast Steamship Company, a corporation, one of the defendants above named,

and answering the complaint of the plaintiff herein admits, denies and alleges as follows:

I.

Referring to the allegations in paragraph 1 in plaintiff's complaint, defendant has not sufficient information on which to form a belief as to the truth and verity of the matters therein set out and therefore denies each and every allegation therein contained.

II.

Referring to the allegation in paragraph 2 of plaintiff's complaint, admits the same.

III.

Referring to the allegations in paragraph 3 of plaintiff's complaint, admits that the plaintiff Elizabeth Decker and her predecessors in interest have heretofore been part owners in block L of the town of Juneau, Alaska, but denies each and every other allegation therein contained.

IV.

Referring to the allegations in paragraph 4 of plaintiff's complaint, admits the same.

V.

Referring to the allegations in paragraph 5 of plaintiff's complaint contained, denies each and every allegation therein contained.

VI.

Referring to the allegations in paragraph 6 of plaintiff's complaint contained, denies each and every allegation therein contained.

VII.

Referring to the allegations in paragraph 7 of plaintiff's complaint, denies each and every allegation therein contained.

VIII.

Referring to the allegations in paragraph 8 of plaintiff's complaint, denies each and every allegation therein contained.

IX.

Referring to the allegations in paragraph 10 of plaintiff's complaint, admits the allegations therein contained.

And for a further and affirmative defense, defendant alleges as follows:

I.

That on and prior to the 20th day of February, 1897, one E. O. Decker and J. M. Decker were the owners of and in the possession of and entitled to the possession of block K and block L of the town of Juneau, District of Alaska and that being the owners of the said blocks on said date, February 20th, 1897, the said E. O. Decker and J. M. Decker and one Lizzie Decker, being the same identical person as the plaintiff herein, Elizabeth Decker, did by due and proper deed of conveyance convey to the Peoples Wharf Company, a corporation, all litoral and appurtenant rights by them owned, or any litoral or appurtenant rights that might thereafter exist, in and to the shore of Gastineaux Channel between the ordinary line of high tide and deep water in the town of Juneau, Alaska, except the warehouse building occupied by the said E. O. Decker and J. M. Decker; that

the said deed was only witnessed, acknowledged and thereafter filed for record on the 16th day of April, 1897, and was duly signed and executed and acknowledged by the plaintiff herein; and that thereafter, prior to April 1, 1898, the premises and rights under the said deed were duly purchased in good faith for a valuable consideration, without any notice whatever of the claim of the plaintiff or plaintiff's grantors, and in reliance upon the said deed of April 16th, 1897, by John I. Waterbury and T. Jefferson Coolidge from the Peoples Wharf Company, a corporation; and thereafter on April 1, 1898, the Pacific Coast Company, a corporation, duly purchased for a valuable consideration in good faith and without notice of any claim whatsoever of the plaintiff or her grantors the premises described in the said deed of February 20th, 1897, together with the rights therein conveyed and incident thereto.

## II.

That after the purchased of the property, described in the said deed of February 20th, 1897, by the Peoples Wharf Company, the Peoples Wharf Company and their successors in interest have erected upon the said property valuable improvements in the shape of stores, shops, wharves and docks at a great expense, to-wit, considerably in excess of \$30,000.00, and that all of the property, save and except the warehouse mentioned in the said deed of February 20th, 1897, lying between blocks K and L and deep water has been in the actual, notorious and exclusive possession of the Pacific Coast Company, and that plaintiff and her predecessors in interest ought to be and

are estopped from asserting any right, title or interest in or to the said premises.

III.

That the plaintiff during all of said years since the 20th of February, 1897, has stood by and allowed improvements of considerable value from time to time to be placed upon said premises; allowed the rents from the said premises to be collected by the Pacific Coast Company and its predecessors in interest, without objection, claim or notice of equity on her part to the said premises.

IV.

That the defendant herein is the lessee of the Pacific Coast Company and is not the real party in interest and has not erected the said wharf nor the Union Iron Works nor any structures upon the said premises, and does not claim the ownership of the same, but merely claims the possession of the same under its lease from the Pacific Coast Company; that the Pacific Coast Steamship Company is not the real party in interest and there is therefore a defect of parties defendant.

Wherefore, defendants pray that this action be dismissed at the plaintiff's cost and that defendants have their costs and expenses herein laid out and expended.

~~(Signed)~~

SHACKLEFORD & LYONS,  
Attorneys for Defendants.

United States of America,  
District of Alaska,—ss.

W. F. Swan, being first duly sworn, on oath deposes and says: I am the agent of the Pacific Coast Steamship Company, a foreign corporation; that I have read the above answer herein, know the contents thereof and that the same is true.

That I make this verification for and on behalf of the defendant corporation, for the reason that there are no other officers of said corporation now within the District of Alaska.

(Signed)

W. F. SWAN,  
Agent.

Subscribed and sworn to before me, this 11th day of December, 1905,

(Sealed)

(Signed) T. R. LYONS,  
Notary Public for Alaska.

Due service of a copy of the within is admitted this 11th day of Dec. 1905.

(Signed)

E. M. BARNES,  
Attorney for Plff.

[Endorsed]: No. 477-A. In the United States District Court for District of Alaska, Division No. 1. Elizabeth Decker, Plaintiff, vs. Pacific Coast Steamship Co., a Corporation, and John Johnston, Defendants. Original Answer. Filed Dec 11, 1905. C. C. Page, Clerk, By D. C. Abrams, Deputy. Shackelford & Lyons, Attorneys for Dfts. Juneau, Alaska.



*District Court for the District of Alaska, Div. No. 1,  
at Juneau.*

No. 477-A.

ELIZABETH DECKER,

vs.

PACIFIC COAST STEAMSHIP CO. (a Corpora-  
tion), and JOHN JOHNSTON.

**Plaintiff's Reply to Answer of Pacific Coast Steam-  
ship Co.**

And now comes *plff* and for reply to the Pacific  
Coast Steamship *Co's*. answer therein denies :

I.

That E. O. Decker in his lifetime or at all, or *JM*.  
Decker or *plf*. at any time ever did by due or proper  
deed or conveyance or at all convey to Peoples  
Wharf Co., a corporation, or any other person or at  
all any littoral or appurtenant rights or any part  
thereof then or that might thereafter exist in or to  
the shore of Gastineaux Channel or at all between  
any line of high tide or deep water or at all in the  
town of Juneau, Alaska, or any other place or that  
said Peoples Wharf Co. was or is a corporation or  
that any deed so conveying said property as alleged in  
*plffs* complaint or conveying it at all or any other  
property was ever *witnessed acknowledged*, signed  
or executed by any of said parties or filed for rec-  
ord at any time or that the said premises or rights  
or any part thereof under said deed or at all were

ever purchased *on* good faith or at all, or for any consideration or at all, or in reliance on any deed by John J. Waterbury or Jefferson Coolidge or any other person from said Peoples Wharf Co. or any other person or that the Pacific Coast Co. a corporation ever purchased or at all for any consideration or at all said property, or rights, or any part thereof without notice or at all at any time.

## II.

Denies that after any purchase by any person or corporation the Peoples Wharf Co. or their successors in interest or any other person, save as is alleged in *plffs* complaint erected any wharves or dock or other improvements at any expense and alleges the nuisance complained of in *plffs* complaint does not exceed the sum of \$1500.00.

## III.

Denies that the *deft* is not the real party in interest in maintaining said nuisance or that there is any defect of parties or at all.

And further answering *plff* alleges.

## I.

That at the time mentioned in *defts* answer to wit Feb. 20th, 1887, the said real property mentioned in *defts* answer was and at all the *time* previous, since Alaska was acquired by the United States had been and up to the 5th day of Oct. 1898 remained exclusively the property of the United States of America and was not owned by private persons or subjects to private ownership.

II.

That at no time until the past year was *plff* informed of or knew of any of her rights herein, that she is a woman who had relied at all times on the advice of hired counsel and none of them until the past year ever informed her of any of her rights herein and previous to said time she had at almost all times since her majority been a housewife and knew nothing of business or business methods.

Wherefore *plff* prays the prayer of her complaint herein be granted.

~~(Signed)~~ E. M. BARNES,  
Att'y for Plff.

United States of America,  
District of Alaska,—ss.

I, Elizabeth Decker being first duly sworn on oath say: That I am the *Plff* in the above-entitled action; that I have read the foregoing replication and know the contents thereof, and believe the same to be true;

~~(Signed)~~ ELIZABETH DECKER.

Subscribed and sworn before me this 16 day of Dec. 1905.

[Court Seal]

~~(Signed)~~ D. C. ABRAMS,  
Deputy Clerk District Court for Division No. 1,  
Alaska.

[Endorsed]: No. 477-A. District Court for the District of Alaska, Division No. 1, at Juneau. Elizabeth Decker, Plaintiff, vs. Pacific Coast Steamship Co et al., Defendants. Replication. Filed Dec

16, 1905. C. C. Page, Clerk. By D. C. Abrams, Deputy. E. M. Barnes, Attorney for *Plff* Office: Juneau, Alaska. Valentine Bldg.

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*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

No. 477-A.

ELIZABETH DECKER,

Plaintiff,

vs.

PACIFIC COAST STEAMSHIP COMPANY (a  
Corporation), and JOHN JOHNSTON,  
Defendants.

**Opinion of District Court.**

ON THE MERITS.

Mr. E. M. BARNES, For the Plaintiff.

Messrs. SHACKLEFORD & LYONS, For the  
Defendant Pacific Coast Steamship Company.

No Appearance for Defendant Johnston.

GUNNISON, District Judge.

Opinion:—Elizabeth Decker, the plaintiff herein, brings this action against the Pacific Coast Steamship Company to abate an alleged private nuisance which the plaintiff asserts has been maintained by the defendant company for two years or more prior to and at the time of the commencement of the suit. She asks damages in the sum of \$1000.00. The defendant Johnston is the joint owner with the plaintiff of Block "L" of the Town of Juneau, and is

made a defendant in this action, he having refused to join as a plaintiff. Plaintiff and defendants seem to agree generally as to the facts in the case, with one exception, and that is as to whether or not, on February 20, 1897, Blocks "K" and "L" abutted upon the line of ordinary high tide, plaintiff contending that, by the deed, Defendants' Exhibit "A," itself, the contention is settled, because it is there recited,—“Lots "K" and "L," the same abutting on Franklin Street in said City, the said street running along the line of ordinary high tide, being the shore of Gastineau Channel in the said Town of Juneau.” The evidence adduced on the trial shows that Blocks "K" and "L" did abut upon the tide land. Nor does the recital in the deed as quoted above negative such a conclusion.

On October 13, 1893, the entry of the townsite of Juneau was duly made by direction of the Secretary of the Interior, under a public survey by G. W. Garside. Blocks "K" and "L" were laid out by Garside within the boundaries of the town. At that time, Edward O. Decker and J. M. Decker were holding the land by right of possession, and they continued to so hold it until October 1, 1898, when deeds passed to them from the Townsite Trustee, Thomas R. Lyons. Subsequent to the entry, but prior to receiving the deeds from the Trustee, and on February 20, 1897, Edward O. Decker and J. M. Decker, together with the plaintiff, then the wife of Edward O. Decker, joined in a deed to the Peoples Wharf Company, a corporation organized under the laws of

Oregon, by which the three "remised, released and forever quitclaimed to the Company, in the following language:

"The right, title, interest and estate, legal or equitable, of the party of the first part, in and to the shores of Gastineau Channel, which we may now or may hereafter possess by virtue of any law of the United States or otherwise, by reason of our now being the owners of Blocks 'K' and 'L,' the same abutting upon Franklin Street of said City, the said street running along the line of ordinary high tide, being the shore line of Gastineau Channel, in the Town of Juneau, and we do, as such owners, grant to said party of the first part, and forever quitclaim to them all littoral and riparian rights appurtenant thereto, if any, that we may now have or that may hereafter exist by any cause whatsoever in our favor, our heirs, administrators or assigns.

"And we do further hereby grant to the party of the first part the right to wharf out from our said premises southwesterly to deep water, and to maintain wharves and warehouses thereon for the *benefit* of trade and commerce, and to own and occupy the same forever, by itself, its successors and assigns, except the building occupied by us, and the land upon which said warehouse is situated."

The interest there conveyed passed by certain mesne conveyances, which are in evidence, to the Pacific Coast Company, which is the lessor of the Pacific Coast Steamship Company, this defendant. Prior to the execution of that lease, the structures alleged

to be the nuisance were erected upon the tide lands in front of Blocks "K" and "L."

The plaintiff, who, with the defendant John Johnston, now owns Block "L," *derains* her title through Edward O. Decker, her deceased husband. It is alleged by plaintiff and admitted by the defendant that Block "L" abuts upon the tide land of Gastineau Channel. The evidence nowhere discloses any change in the relative position of Block "L" and the tide land between the time of the giving of the deed and the commencement of this suit.

There are in the case three questions, any one of which is decisive:

First. Is or is not the Pacific Coast Steamship Company the real party in interest? If it be merely the lessee, can this suit be maintained against it? The evidence discloses that the Pacific Coast Steamship Company is the lessee, and that the Pacific Coast Company is the owner.

It is a well-settled rule of law that whenever a nuisance exists upon the premises at the time of letting, the landlord by letting the premises in such condition, consents to the continuence of the nuisance, and is liable to all injuries to third persons from its continuence by the tenant. To state the converse of the rule, a tenant is not liable for a nuisance created by his landlord and not by himself. My conclusion is that the Pacific Coast Steamship Company is not the real party in interest, and that the suit should be dismissed.

As to second question in the case, that is, as to whether or not the deed of February 20, 1897 can be

held to convey the rights of plaintiff to the tide land, we are of the opinion that the Deckers at that time were the owners of the abutting upland, as against all *person* save the United States, and that they consequently were the owners of the littoral right, or the right of access to deep water. The plaintiff contends that this right is an appurtenance to the land, in other words, an incorporeal hereditament, and as such runs with the land and cannot be severed from it. We cannot agree with him upon this proposition. We cannot see that the cases cited sustain it. Were that contention true, the granting by the Government of the United States of a patent to abutting uplands would carry with it the absolute right to the tide land. This, however, is not the fact, for the tide lands are held by the Federal Government for the benefit of the future state, to be dealt with by the State as it sees fit; and, under the cases cited by plaintiff, the various states taking title to the tide lands in this way have seen fit to grant the tide lands to strangers, separate and apart from the upland holdings. The holder of abutting tide lands has what is termed a littoral right, that is, a right of ingress and egress to the deep water over the tide lands abutting upon this property, and the same is true of a patentee of the United States, subject, of course, to the control of the future state. That the holder by possessory title or a patent may exercise that right, or give the right to some other, is beyond question, and has been so held in repeated instances. It was clearly the intention of the Deckers at the



time of the execution of the deed of February 20, 1897, to release to the Peoples Wharf Company their rights of ingress and egress over the tide lands abutting upon their property. In the opinion of the Court, the quitclaim deed effectually *convey* any right which they then held as possessory owners, or which they might thereafter acquire as patentee of those premises from the United States. It is therefore apparent that, against either of these contentions, plaintiff cannot succeed, and the action should be dismissed. It also appears to the Court that plaintiff, even though she had not effectually transferred those rights which were attempted to be transferred by the deed, cannot at this late day be heard to object to the action of her grantees under, and relying upon, that deed in the construction of wharves and other structures which took place under her very eyes. A person seeking redress of the character which she here seeks, should be, and is, in the opinion of the Court, estopped from questioning these acts after the long lapse of time, especially when she does not plead as an excuse for her lack of diligence fraud or misrepresentation on the part of the defendant.

Our conclusion is, therefore, that the suit should be dismissed.

Dated at Juneau, this 31<sup>st</sup> day of December, 1906.

~~(Signed)~~ ROYAL A. GUNNISON,  
District Judge.

[Endorsed]: No. 477-A. In the District Court for the District of Alaska, Division No. 1. Eliza-

beth Decker, Plff. vs. Pacific Coast S. S. Co. et al.,  
*Defts* Memo. of Decision. Original. Filed Jan 5,  
 1907. C. C. Page, Clerk. By J. E. Brooks, Asst.

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*District Court for the District of Alaska, Division  
 No. 1, at Juneau.*

No. 477-A.

ELIZABETH DECKER,

vs.

THE PACIFIC COAST STEAMSHIP CO. (a  
 Corporation), and JOHN JOHNSTON.

**Plaintiff's Proposed Findings of Fact and Con-  
 clusions of Law.**

The Court finds as facts.

I.

That the *plff* is the identical person described in the decree of distribution wherein the property described in the complaint was distributed to her by decree of the Probate court of District of Alaska, Div. No. 1, Juneau precinct. Refused R. A. G.

That *plff* introduced in evidence the trustees deed of the City of Juneau conveying the property in *plff's* complaint to *plff's* grantors and from *plff's* grantors to *plff*. Refused R. A. G.

II.

That said premises abutt on the waters of Gastineaux Channel at mean high tide, and against which the tide regularly ebbs and flows twice in twenty-four hours. Refused as already found. R. A. G.

III.

That in front of said premises and between said premises and deep water the deft., The Pacific Coast Steamship Co., a corporation, now maintains and for more than two years last passed has maintained a building and wharf. Refused. R. A. G.

IV.

That deft., The Pacific Coast Steamship Co., a corporation, will continue so to maintain such building and wharf unless prevented by this Court and thereby cause plff. irreparable damage. Refused. R. A. G.

V.

That the said buildings are known as the Union Iron Works. Granted. R. A. G.

VI.

That by said acts the Deft., The Pacific Coast Steamship Co., a corporation, has damaged plff. in the sum of ——— dollars. Refused. R. A. G.

VII.

That the deft. John Johnston has failed to appear in this suit. Refused as already *already* given. R. A. G.

And as conclusions of law the Court finds

I.

That the default of the deft. John Johnston has been duly entered and that he is entitled to nothing by this suit. Granted. R. A. G.

II.

That the plff. is the owner of the premises described in *plff's* complaint. Refused. R. A. G.

## III.

That plff. is entitled to wharf out in front of the said premises to deep water. Refused. R. A. G.

## IV.

That the occupation of said premises by said deft., The Pacific Coast Steamship Co., a corporation, constitutes a private nuisance to this plff. Refused. R. A. G.

## V.

That plff. is entitled to have said nuisance abated. Refused. R. A. G.

## VI.

That plff. is entitled to damages in the sum of \_\_\_\_\_ dollars and her costs and disbursements herein expended. Refused. R. A. G.

\_\_\_\_\_,  
Judge.

[Endorsed]: No. 477-A. District Court for the District of Alaska, Division No. 1, at Juneau. Elizabeth Decker, Plaintiff, vs. The Pacific Coast Steamship Co., a Corporation, and John Johnston, Defendants. Findings Filed Jan. 9, 1907. C. C. Page, Clerk. By J. E. Brooks, Asst. E. M. Barnes, Attorney for Plaintiff. Office: Juneau, Alaska.

*District Court for the District of Alaska, Division  
No. 1, at Juneau.*

No. 477.

ELIZABETH DECKER,

vs.

PACIFIC COAST STEAMSHIP COMPANY (a  
Corporation), and JOHN JOHNSTON.

**Plaintiff's Proposed Amendments to Findings of  
Fact, etc.**

*Plffs* proposed amendments to *the findinds* of fact, in addition to her proposed findings of fact.

In finding II on line 8 between the words "land" and "abut" insert "at the time of the commencement of this suit, and add to the said finding," and on said 13th day of *Oct* 1893, there was made and filed with said Register and receiver a map of said townsite of Juneau showing Franklin Street to be between blocks K. and L. and the meander line of said mean high tide. Refused. R. A. G.

Amend finding III to read "that on and prior to the 20th day of Feb. 1897, the *plffs* decedent was in possession of said block, the title thereto being in the U. S., and was entitled to the possession of said block, and on said "*oth* day of Feb. 1987 said decedent one J. M. Decker and Lizzie Decker the *plff* herein did by quit claim deed convey to the Peoples Wharf Company, a corporation all of their right titled and interest, if any they then had, to all of their littoral and riparian rights immediately abut-

ting on Franklin Street and further quitclaimed by proper quitclaim deed to the said Peoples wharf company all of the littoral rights which they or any of them might thereafter exist to the tide lands of said Gastineqau Channel abutting on said Franklin Street. That thereafter, by mesne conveyance the Pacific Coast Company, a corporation acquired all of the right title and interest of said Peoples Wharf Company in and to all of the littoral and riparian rights granted by said deed of Feb. 20th 1987 and that said Pacific Coast Steamship Company is now and was at the time of the commencement of this suit and at all the times alleged in the complaint *was* in such possession. Refused as portion of above has already been found and portion not warranted by proof. R. A. G.

Strike out finding IV.

In finding V. between the words "1897" and "the" in line one insert and before *plff* obtained title by decree of distribution to said lots or any portion thereof" Granted. and in line IV of finding V. on page 3 of said findings change the *the* words twenty "thousand dollars" to "three thousand dollars" Refused R. A. G. and on the last and the preceding line of said finding strike out the words "Pacific Coast Company" and insert the words "*deft* and its lessors." Refused—R. A. G. Strike out the last three lines of finding VI and in place thereof add "That she has only had title to said block since Aug. 1902." Refused. In finding VII on line two thereof strike out the words "and is not the real party in interest" and

add the words "And has been such lessee since Aug. 1902." Refused. R. A. G.

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Atty for plff.

[Endorsed]: No. 477 A. District Court, for the District of Alaska, Division No. 1, at Juneau. Elizabeth Decker, Plaintiff, vs. *Pacific Coast Co* etc. et. al., *Defendant*. Proposed Additional Findings. Filed Jan. 9, 1907. C. C. Page Clerk. By J. E. Brooks, Asst. E. M. Barnes, Attorney for *Plff* Office: Juneau, Alaska, Valentine Building.

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*In the District Court for the District of Alaska, Division No. 1, at Juneau.*

No. 477-A.

ELIZABETH DECKER,

Plaintiff,

vs.

PACIFIC COAST STEAMSHIP COMPANY (a Corporation), and JOHN JOHNSTON,  
Defendants.

**Findings of Fact and Conclusions of Law of District Court.**

Now on this day, this cause coming on to be heard on motion of attorneys for the defendant, Pacific Coast Steamship Company, for findings of fact and conclusions of law, in accordance with the written opinion heretofore rendered in this cause by this Court, and the Court being fully advised in the premises makes the following findings of fact, to wit:

## I.

That the defendant, Pacific Coast Steamship Company, is a corporation, duly organized under the laws of the State of California and doing business in the District of Alaska.

## II.

That the entry of the townsite of Juneau was made by the Receiver and Register of the Land Office at Sitka, Alaska, on the 13th day of October, 1893, that thereafter, to wit, on the 4th day of September, 1897, a United States patent was duly issued by the President of the United States to Thomas R. Lyons, as trustee, for the use and benefit of the occupants of said townsite of Juneau; that blocks K and L are a portion of said Juneau townsite, and said blocks or parcels of land abut on the mean high tide-line of Gastineau Channel, an arm of the Pacific Ocean.

## III.

That on and prior to the 20th day of February, 1897, one E. O. Decker and J. M. Decker were the owners of, and in possession of and entitled to the possession as against all parties save the United States in which the legal title then stood of blocks K and L of the Town of Juneau, in the District of Alaska, and while said E. O. Decker and said J. M. Decker were the owners of said blocks, and on the said 20th day of February, 1897, said E. O. Decker and J. M. Decker and Lizzie Decker, the then wife of said E. O. Decker who is the same person as the plaintiff herein, Elizabeth Decker, did, by due and proper deed of conveyance, quitclaim and convey to



the People's Wharf Company, a corporation, all of their littoral and riparian rights immediately abutting on said blocks K and L, except a small warehouse situate on said tide land and which is not in controversy in this action, and further by said conveyance quitclaimed by proper conveyance to the said People's Wharf Company all of the littoral or riparian rights which they, or any of them, might thereafter acquire to the tide lands of said Gastineau Channel abutting on said blocks K and L. That thereafter, by mesne conveyances, the Pacific Coast Company, a corporation, acquired all the right, title and interest of said People's Wharf Company in and to all of the littoral and riparian rights immediately in front of and abutting upon said blocks K and L, and that said Pacific Coast Company *is and now was* the owner of, in possession by its lessee the Pacific Coast Steamship Co. of and entitled to the possession as against all persons save its lessee and the United States of all of said premises at the time of the commencement of this action.

#### IV.

That plaintiff has no right, title or interest in or to any of the *literal* or riparian rights or tide lands immediately abutting on and in front of said blocks K and L except a small portion of ground upon which a certain warehouse stands, and that said portion of ground and warehouse are not in controversy in this action.

#### V.

That since the said 20th day of February, 1897,

and before plaintiff obtained title by decree of distribution to said lots or any portion thereof the said People's Wharf Company, and their successors in interest, have erected upon said tide land valuable improvements in the shape of stores, shops, wharves and docks at a great expense, aggregating in an *approximate* sum of eighteen thousand dollars (\$18,000); that all of the properties hereinbefore described in these findings of fact, save and except the warehouse mentioned in Finding No. 2, and that all of the littoral and riparian rights and tide land herein described have been in the actual, notorious and exclusive possession of the Pacific Coast Company and its grantors since the 20th day of February, 1897.

## VI.

That the plaintiff herein is the widow of said E. O. Decker, and during all of the said *time* since the 20th day of February, 1897, has allowed improvements of great value from time to time to be placed upon said premises without objection, claim or notice of equity on her part to said premises.

## VII.

That the defendant herein, Pacific Coast Steamship Company, is the lessee of the Pacific Coast Company, and is not the real party in interest, and has not erected any wharf or any structures upon said premises, and does not claim the ownership of the same, but merely claims the possession on the same under its lease from the Pacific Coast Company.

## VIII.

That the defendant, John Johnston, has made no

appearance herein and has made no claim to the premises in controversy in this action.

As conclusions of law, based on the foregoing findings of fact, the Court finds:

That the Pacific Coast Company, which is the lessor of the defendant, the Pacific Coast Steamship Company, is as against all persons except the United States the owner of the premises described in the complaint herein, and was such owner of said premises at the commencement of the suit and at all times since the commencement thereof.

II.

That plaintiff's complaint shall be dismissed and that defendant, Pacific Coast Steamship Company, have judgment against the plaintiff for its costs and disbursements herein.

Dated this 9<sup>th</sup> day of January, 1907.

~~(Signed)~~ ROYAL A. GUNNISON,  
Judge.

Due Service of a copy of the within is admitted this 7 day of *Jany* 1907.

~~(Signed)~~ E. M. BARNES,  
Attorney for *Plff*

[Endorsed]: Original. No. 477-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Elizabeth Decker, Plaintiff, vs. Pacific Coast Steamship Co. & John Johnston, Defendants. Findings of Fact & Conclusions of Law. Filed Jan. 9, 1907. C. C. Page, Clerk. By J. E.

Brooks, Asst. Shackelford & Lyons, Attorneys for  
Deft. P. C. S. S. Co. Office: Juneau, Alaska.

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*In the District Court for the District of Alaska, Di-  
vision No. 1, at Juneau.*

No. 477-A.

ELIZABETH DECKER,

Plaintiff,

vs.

PACIFIC COAST STEAMSHIP COMPANY (a  
Corporation), and JOHN JOHNSTON,  
Defendants.

### **Judgment.**

Now ~~on~~ this day this cause coming on to be heard on motion of counsel for the defendant, Pacific Coast Steamship Company, for a judgment dismissing plaintiff's complaint, and it appearing to the Court that the Court has heretofore made its findings of fact and conclusions of law herein, and it further appearing from said findings of fact and conclusions of law that the lessor of the defendant, Pacific Coast Steamship Company, is the owner of, in possession of and entitled to the possession of the premises described in the complaint herein, as against all persons except the United States, and that the said Pacific Coast Company was, at the time of the commencement of this action and long prior thereto, such owner of said premises, and that the plaintiff herein had no right, title or interest in or to said

premises, or any portion thereof, at the time of the commencement of this action.

It is now, therefore, considered, ordered and adjudged that plaintiff's complaint herein be dismissed and that defendant, Pacific Coast Steamship Company, have and recover of and from the plaintiff herein its costs and disbursements herein, taxed at dollars.

Done in open court this 11<sup>th</sup> day of January, 1907.

ROYAL A. GUNNISON,

Judge.

[Endorsed]: Original. No. 477-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Elizabeth Decker, Plaintiff, vs. Pacific Coast Steamship Co. & John Johnston, Defendants. Judgment. Filed *Jan 11*, 1907. C. C. Page, Clerk, by J. E. Brooks, Asst. Shackelford & Lyons, Attorney for Dft. P. C. S. S. Co. Office: Juneau, Alaska.

*District Court for the District of Alaska, Division  
No. 1, at Juneau.*

No. 477—A.

ELIZABETH DECKER

vs.

THE PACIFIC COAST STEAMSHIP COM-  
PANY (a Corporation), and JOHN JOHN-  
STON.

**Order Extending Time for Filing and Settling Bill  
of Exceptions and Staying Execution During  
said Time.**

On motion of E. M. Barnes, *Atty.* for *plff* herein,  
*It* is ordered that *plff* have until Monday, July 1st,  
at 10 A. M. or as soon thereafter as counsel can be  
heard to settle and file her bill of exceptions herein,  
and that in the meantime execution herein be stayed.

Done in open court this 11th day of *Jan'y* 1907.

~~(Signed)~~ ROYAL A. GUNNISON,

Judge.

[Endorsed]: No. 477-A. District Court, for the  
District of Alaska, Division No. 1, at Juneau. Eliz-  
abeth Decker, Plaintiff, vs. Pacific Coast Steamship  
Co. et *al* Defendants. Order Extending Time for  
Filing Bill of Exceptions & Staying Execution.  
Filed *Jan* 11, 1907. C. C. Page, Clerk. By J. E.  
Brooks, Asst. E. M. Barnes, Attorney for *Plff*  
Office: Juneau, Alaska, Valentine building.

*In the District Court for Alaska, Division No. 1, at  
Juneau.*

No. 477.

ELIZABETH DECKER

vs.

PACIFIC COAST STEAMSHIP COMPANY (a  
Corporation ) et al.

**Order Extending Time for Serving and Filing Bill  
of Exceptions and Staying Execution.**

By consent of counsel herein it is ordered that *plff*  
have until Tuesday, *Oct* 1st to serve and file her bill  
of exceptions herein, and that in the meantime execu-  
tion be stayed.

Done in open court this 24 day of June, 1907.

~~(Signed)~~ JAMES WICKERSHAM,  
Judge.

O. K.—SHACKELFORD & LYONS.

[Endorsed]: No. 477-A. In the District Court for  
Alaska, Division No. 1, at Juneau. Elizabeth  
Decker, Plaintiff, vs. Pacific Coast Co., a Corpora-  
tion et al., Defendants. Order Extending Time for  
Filing Bill of Exceptions and Staying Execution, etc.  
E. M. Barnes, Attorney for *Plff* Office: Juneau,  
Alaska, Rooms 1 and 2, Valentine building. Filed  
*Jun* 24 1907. C. C. Page, Clerk. By R E Rob-  
ertson, Asst.

*In the District Court for Alaska, Division No. 1, at  
Juneau.*

ELIZABETH DECKER

vs.

PACIFIC COAST STEAMSHIP CO.

**Order Extending Time to Settle and File Bill of Ex-  
ceptions, etc.**

On motion of E. M. Barnes, Attorney for

It is ordered that Elizabeth Decker, the *plff* have until Monday, *Nov* 1st 1907 at 10 A. M. to settle and file the bill of exceptions herein, execution to be stayed in the meantime.

Dated *Sep* 30th 1907, at Chambers.

ROYAL A. GUNNISON,

Judge.

[Endorsed]: No. 477-A. In the District Court for Alaska, Division No. 1, at Juneau. Elizabeth Decker, Plaintiff, vs. Pacific Coast Steamship *Co* et al, Defendants. Order Extending Time of Filing Bill of Exceptions. Filed *Oct* 1 1907. C. C. Page, Clerk. By R. E. Robertson, Asst. E. M. Barnes, Attorney for *Plff*



*In the District Court for Alaska, Division No. 1, at  
Juneau.*

No. 477-A.

ELIZABETH DECKER,

vs.

PACIFIC COAST STEAMSHIP COMPANY (a  
Corporation) and JOHN JOHNSTON,  
Defts.

**Plaintiff's Proposed Bill of Exceptions.**

Be it remembered that at the trial of this suit the following proceedings were had,

The *deft* Johnston made default.

The *plff* was called as a witness in her own behalf and was asked:

Mr. BARNES.—Q. Mrs. Decker, I would ask you how much, if any, you have been damaged by the maintenance of those buildings on that property, by the Pacific Coast Steamship Company as described in the answer?

Mr. LYONS.—We object to the question for the reason that the damages are not properly pleaded in the complaint, and for the further reason that the witness has not shown herself qualified to testify to any damages that she has sustained by virtue of these structures. No proper foundation has been laid to justify or enable the Court to determine whether or not this witness is competent to testify as to any damages suffered.

The COURT.—The first part of that objection I will overrule with leave to renew, and sustain the second part, that she had not qualified herself to testify on the question of damages.

Plaintiff excepts.

Plaintiff introduced in evidence the following deed.

**Deed (Dated October 1, 1898), Thomas R. Lyons, as  
Trustee, to Jay M. Decker et al.**

No. ——— Trustee's Deed.

Thomas R. Lyons

to

J. M. & E. O. Decker.

This indenture made this 1st day of October in the year of our Lord one thousand eight hundred and ninety-eight, by and between Thomas R. Lyons as Trustee for the townsite of Juneau, in the Territory of Alaska, party of the first part, and Jay M. Decker and Edward O. Decker, of Juneau, in the District of Alaska, parties of the second part, witnesseth:

Whereas said party of the first part has been appointed *trustee* for said townsite by the Secretary of the Interior, under the provisions of sections 11 to 15 inclusive, of the Act of Congress approved March 3, 1891, entitled "An Act to repeal timber culture laws, and for other purposes," (26 Stats. 1095), and

Whereas, pursuant to said appointment as such trustee, said party of the first part has duly qualified and entered upon the performance of his duties as such, as provided in said act and the regulations of the Secretary of the Interior, dated June 3, 1891, for his guidance, and

Whereas, on the 13th day of October, A. D. 1893, said party of the first part, as such trustee entered the tract of land upon which the townsite of Juneau is situate, being survey No. 1 of public surveys in Alaska, under said act, executed by Geo. W. Garside, United States Deputy surveyor, under instructions from the United States Marshal, ex-officio surveyor general of Alaska, bearing date of the 8th day of March, 1892, approved by said United States marshal, ex-officio surveyor general, on the 21st day of October, 1892, and

Whereas said trustee has entered said land in trust for the several use and benefit of the occupants thereof into lots, blocks, squares, streets, and alleys, and has assessed upon each of the lots in said townsite the sums of money contemplated by the instructions of the Secretary of the Interior, and

Whereas, said trustee finds that according to the true spirit and intent of said act that said parties of the second part are interested in said townsite and entitled to the premises thereon as hereinafter described, and

Whereas, said parties of the second part have paid the assessments upon said property, amounting to the sum of six dollars,

Now, therefore, said party of the first part, as such trustee, by the virtue of the power vested in and conferred upon him by the terms of said act, and in consideration of said sum, the receipt of which is hereby acknowledged, by these presents does grant, convey and confirm unto the same parties of the second part and their heirs and assigns, all the following lot,

piece and *parce* of land situate in the Town of Juneau and Territory of Alaska, described as follows, to-wit: Lot three (3) in Block "L," as per the official plat thereof, to have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, forever.

In witness whereof, said party of the first part, as such trustee, has hereunto set his hand and seal on the day and year first above written.

THOMAS R. LYONS, [Seal]

Trustee for the Townsite of Juneau, Alaska Territory.

In the presence of

F. D. KELSEY.

EDWIN SHAW.

Territory of Alaska:

Be it remembered, that on this 3d day of October, A. D. 1898, before me, a Notary Public, came Thomas R. Lyons, to me personally known to be the trustee of said townsite of Juneau, Alaska, and the identical person described in, and whose name is affixed to, the foregoing conveyance as grantor, and he acknowledges the execution of the same to be his voluntary act and deed as such *trustee* for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my official seal on the day and year first above written.

[Seal]

F. D. KELSEY,  
Notary Public.

I. R. St.

10¢

Filed for record at the request of — on the 4th day of October, A. D. 1898, at 3 P. M.

NORMAN E. MALCOLM,  
Recorder.

United States of America,  
District of Alaska,—ss.

I, the undersigned, hereby certify that the foregoing is a true, correct and complete transcript of the record, and of the whole thereof, as the same appears of record in Book 13 of trustee's deeds, on Page 139 of the records of the Juneau Recording District, District of Alaska.

Witness my hand and official seal this — day of April, 1906.

H. H. FOLSOM,  
Recorder for Juneau Recording District, Alaska,

Mr. BARNES.—I now offer for identification trustee's deed from the trustee to Jay M. Decker and Edward O. Decker, for Lots 1 and 2 in Block "L" of the Town of Juneau.

Marked for identification "Pliff's Exhibit No. 2, Case No. 477.")

Mr. BARNES.—I offer that in evidence.

Mr. LYONS.—I object to the offer, for the reason that the answer alleges that the defendant is merely

leasing the littoral rights of the property in controversy from the Pacific Coast Company, and that allegation is not denied in the reply.

Objection overruled without prejudice to a motion to strike at the close of the evidence.

*Plff's* Exhibit No. 2, received in evidence, reads as follows:

**Plaintiff's Exhibit No. 2.**

No. — Trustee's Deed.

Thomas R. Lyons

to

J. M. and E. O. Decker.

This indenture, made this 1st day of October, in the year of our Lord one thousand eight hundred and ninety-eight, by and between Thomas R. Lyons, as trustee for the townsite of *June*, in the Territory of Alaska, party of the first part, and Jay M. Decker and Edward O. Decker, of Juneau, in the District of Alaska, parties of the second part, witnesseth:

Whereas, said party of the first part has been appointed trustee for said townsite by the Secretary of the Interior, under the provisions of sections 11 to 15 inclusive, of the Act of Congress approved March 3, 1891, entitled, "An act to repeal timber-culture laws, and for other purposes," (26 Stats. 1095), and

Whereas, pursuant to said appointment as such trustee, said party of the first part has duly qualified and entered upon the performance of his duties as such, as provided in said act and the regulations of the Secretary of the Interior, dated June 3, 1891, for his guidance, and

Whereas, on the 13th day of October, A. D. 1893, said party of the first part, as such trustee, entered the tract of land upon which the townsite of Juneau is situate, being survey No. 1 of public surveys in Alaska, under said act, *ecuted* by Geo. W. Garside, United States Deputy Surveyor, under instructions from the United States marshal, ex-officio surveyor general of Alaska, bearing date of the eighth day of March, 1892, approved by said United States marshal, ex-officio surveyor general, on the 21st day of October, 1892, and

Whereas, said trustee has entered said land in trust for the several use and benefit of the occupants thereof, according to their respective interests, and has made a survey thereof into lots, blocks, squares, streets and alleys, and has assessed upon each of the lots in said townsite the sums of money contemplated by the intructions of the Secretary of the Interior, and

Whereas, said trustee finds that according to the true spirit and intent of said act that said parties of the second part are interested in said townsite and entitled to the premises thereon, as hereinafter described, and

Whereas, said parties of the second part have paid the assessments upon said property amounting to the sum of ninety-six dollars,

Now, therefore, said party of the first part, as such trustee, by virtue of the power vested in and conferred upon him by the terms of said act, and in consideration of said sum, the receipt of which is hereby acknowledged, by these presents does grant, convey

and confirm unto the said parties of the second part and their heirs and assigns, all the following lots, pieces and *parcel* of land situate in the Town of Juneau, the Territory of Alaska, described as follows, to-wit:

Lots One (1) and two (2) in Block "L," as per the official plat thereof.

To have and to hold the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, forever.

In witness whereof said party of the first part, as such trustee, has hereunto set his hand and seal on the day and year first above written.

THOMAS R. LYONS, [Seal]

Trustee for the Townsite of Juneau, Alaska Territory.

In the presence of

F. D. KELSEY.

EDWIN SHAW.

Territory of Alaska:

Be it remembered, that on this 3d day of October, A. D. 1898, before me, a Notary Public, came Thomas R. Lyons, to me personally known to be the trustee of said townsite of Juneau, Alaska, and the identical person described in, and whose name is affixed to, the foregoing conveyance, as grantor, and he acknowledges the execution of the same to be his voluntary act and deed as such trustee for the uses and purposes therein mentioned.



In testimony whereof I have hereunto subscribed my name and affixed my official seal on the day and year first above written.

[Seal]

F. D. KELSEY,  
Notary Public.

Filed for record at the request of \_\_\_\_\_ on the 4th day of October, A. D. 1898, at 3 P. M.

NORMAN E. MALCOLM,  
Recorder.

United States of America,  
District of Alaska,—ss.

I, the undersigned, hereby certify that the foregoing is a true, correct and complete transcript of the record and of the whole thereof, as the same appears of record in Book 13 of the Trustee's Deeds, on page 138 of the records of the Juneau recording district, District of Alaska.

Witness my hand and official seal this — day of April, 1906.

H. H. FOLSOM,  
Recorder for Juneau Recording District, Alaska.

Mr. BARNES.—I offer now for identification a deed from J. M. Decker to John Johnson for an undivided half interest in Lots 1 and 2, and Lot 3, of Block "L." There is other property described in there, but I don't offer it for any purpose of proving title.

Marked for identification "*Pliff's* Exhibit No. 3, Case No. 477-A.

Mr. BARNES.—I now offer it in evidence.

Mr. LYONS.—I object to the offer for the reason that the instrument or deed is incompetent, irrelevant and immaterial, in that the rights of the defendant Johnson are not in controversy at this time in this action, and for the further reason that the answer alleges that the defendant is merely a lessee of the Pacific Coast Company, and that allegation is not denied in the reply.

Objection overruled without prejudice to a motion to strike at the close of the evidence.

*Plff's* Exhibit No. 3, received in evidence, reads as follows:

**Plaintiff's Exhibit No. 3.**

This indenture, made the 11th day of January, in the year of our Lord one thousand nine hundred and four,

Between Jay M. Decker and Rosalie Decker, his wife, the parties of the first part, and Johnston, the party of the second part,

Witnesseth, that the parties of the first part, for and in consideration of the sum of One thousand seven hundred and fifty dollars (1750) gold coin of the United States to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, do by these presents, bargain, sell, convey and confirm unto the said party of the second part, and to his heirs and assigns the following described tracts, lots or parcels of land lying and being in the city of Juneau, District of Alaska, and particularly bounded and described as follows, to wit:

An undivided one half interest in and two Lots numbered One (1) and Two (2) in Block "L" of the

Town of Juneau, District of Alaska, as per the official plat thereof; and Lot numbered (3) in Block "L" of the Town of Juneau, District of Alaska, as per the official plat thereof; and the easterly one-half of Lot numbered One (1) in Block "K" of the Town of Juneau, District of Alaska, as per the official plat thereof; and that certain lot, piece or parcel of land on the water front opposite the old Decker store building on Lot Two (2) in Block "L," said water front lot being in dimensions forty (40) by forty (40) feet more or less, in the Town of Juneau, District of Alaska, together with the improvements upon said aforescribed lot and parcel, and all the right, title and interest in and to the above mentioned property belonging to the parties of the first part;

Together with the appurtenances to have and to hold the said premises with the appurtenances unto the said party of the second part and to his heirs and assigns, forever.

And the said parties of the first part, their heirs, executors and administrators, do by these presents covenant, grant and agree to and with the said party of the second part, his heirs and assigns, that they the said parties of the first part, *theirs*, executors and administrators, all and singular, the said premises hereinabove conveyed, described and granted or mentioned, with the appurtenances unto the said party of the second part, his heirs and assigns, and against all and every person or persons, whomsoever, lawfully claiming or to claim the same or

any part thereof, shall and will warrant and forever defend.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JAY M. DECKER. [Seal]

MRS. ROSALIE DECKER. [Seal]

Signed, sealed and delivered in the presence of

L. R. GILLETTE.

O. M. GILLETTE.

United States of America,  
District of Alaska,—ss.

This is to certify that on this eleventh day of January, A. D. 1904, before me the undersigned, a Notary Public in and for the State of Washington, dully commissioned and sworn, personally came J. M. Decker and Rosalie Decker, his wife, to me known to be the persons described in and who executed the within instrument, and acknowledged to me that they signed and sealed the same as their free and voluntary act and deed, and for the uses and purposes therein mentioned.

And the said Rosalie Decker, wife of the said Jay M. Decker, upon an examination by me separate and apart from her said husband when the contents of said instrument were by me fully made known to her, and she was by me fully apprised of her rights and the effect of signing the within instrument, did freely, voluntarily, separate and apart from her said husband, acknowledge the same, acknowledging that she did, voluntarily, of her own free will, and without

the fear of or coercion from her husband, execute the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year in this certificate first above written.

[Seal] L. R. GILLETTE,  
Notary Public for the District of Alaska, Residing  
at Juneau.

Filed for record at 3:45 o'clock, P. M., *Jan'y* 12th,  
1904.

H. H. FOLSOM,  
Recorder.

I hereby certify that the foregoing is a true, correct and complete transcript of the record, and of the whole thereof, as the same appears in Book 19 of Deeds, on page 517 of the records of the Juneau Recording District, Alaska.

Witness my hand and official seal this — day of  
April, 1906.

[Seal] H. H. FOLSOM,  
Recorder for Juneau Recording District, Alaska.

The recorded plat was admitted to be identical with the official plat referred to in the trustees deed.

The *plff* testified that she knew the property in question and desired to build a wharf from the upland described in *plffs* complaint to deep water, but was prevented from so doing by the obstructions maintained by *deft* as described in *plffs* complaint; had lived in Juneau since 1892, and was asked the question, "Have you some knowledge, Mrs. Decker, of the amount of freight that you would probably be

able to handle over your wharf, provided you had a wharf there?

Objected to by *deft* corporation as incompetent, irrelevant and immaterial, speculative, and not within the pleadings, and not the proper way to prove damages.

Objection sustained by the Court, and *plff* duly excepted.

Q. Do you know, generally, Mrs. Decker, from common repute and what you see in the newspapers, that the charges by these wharf companies here in Juneau are excessive?

*Deft* corporation objected to the question as incompetent, irrelevant and immaterial, not within the pleadings, and the answer to which would tend in no way to show how much the *plff* is damaged by the maintenance of the structure on the premises.

Objection sustained and *plff* duly excepted.

*Iy* was admitted by the pleadings that *deft* corporation is a corporation as described in the complaint; that *plff* and *deft* Johnston are owners of the premises as described in the complaint; that the premises abutt on the waters of Gastineaux Channel, at mean high tide, and against which the tide regularly ebbs and flows twice in 24 hours as alleged in *plffs* complaint; that the buildings sought to be abated are known as the Union works as alleged in *plffs* complaint, and that the wharf sought to be removed is between said buildings and deep water as alleged in *plffs* complaint:

That the *deft* corporation maintains the said buildings and wharf as the lessee of the party who built

them as alleged in *defts* answer. It is admitted by plaintiff that she is the same person as Lizzie Decker, who with Edward O. Decker and Jay M. Decker executed the instrument purporting to convey certain property, including the tract of land in controversy in this action, to the Peoples Wharf Company, which instrument has been received in evidence herein over plaintiff's objections.

It was admitted by *plff* that all the upland described in the deeds and instruments offered in evidence by the *plff* was within the tract of land entered by the townsite trustee for townsite entries of land in Juneau, Alaska, on the 13th day of October, 1893, and that *plff* and her grantors were in possession of the land described in the deeds offered in evidence by *plff* on October 13, 1893, the date of the Juneau townsite entry; but *plff* refuses to admit, and denies, that any littoral rights attached to the premises mentioned until the issuance to *plff* and her grantors of a patent therefor from the United States government.

The *deft* offered in evidence a deed dated April 20th, 1897, between E. O. Decker and Lizzie Decker, his wife, and Jay M. Decker, to the Peoples Wharf Company, a corporation, to the introduction of which *plff* objected as follows:

“Mr. BARNES: We object to it, if the Court please, on the ground that it is incompetent to prove title in the grantee, as Congress alone has the right to make grants below high water in any territory of the United States; this at the time being United States property; second, it appears from a perusal of the deed that Franklin street was between the land

owned by the grantors and ordinary high tide, and, therefore, the grantors had no littoral rights to grant; third, the deed is a quitclaim deed, and at the time all the land in Alaska belonged to the United States, and a quitclaim deed only conveyed the interests which the grantors possessed at the time of making the deed which was nothing; fourth, that the right to erect and maintain the wharf cannot belong to any person save the littoral proprietor, which in this case is the plaintiff. No rights to wharf out can be compared without a conveyance of the land itself. The wharf right cannot be destroyed by an attempted grant of the submerged soil to a stranger, because the riparian right is as much property and is as valuable as any right possessed by the owner of the upland. The ownership of the land is a necessary incident to the erection of a wharf. The rights of the riparian owner cannot be detached from the soil out of which they arise or to which they are incident, and therefore cannot be transferred without an actual conveyance of the soil itself. A purchaser by a quitclaim deed is not a bona fide purchaser and has no rights to the after acquired title of the grantor in a quitclaim deed, for the further reason that it is immaterial.



Objection overruled by the Court and *plff* duly excepted, and said deed so introduced was in the words and figures, as follows, to wit:

[Cut out in original:]

~~after acquired~~ title of the grantor in a quitclaim deed. For the further reason that it is immaterial.

~~Objection overruled without prejudice to a motion to strike at the close of the case.~~

~~Deed received in evidence and marked Defendant's Exhibit "A," Case No. 477-A.~~

~~Defendant is permitted to substitute therefor certified copy. Plaintiff excepts. Defendant's Exh. "A" reads as follows.~~

**Deed, Dated February 20, 1897—Edward O. Decker et ux. to Jay M. Decker et al.**

This indenture, made this 20th day of February, in the year of our Lord one thousand eight hundred and ninety-seven, between Edward O. Decker and Lizzie Decker, his wife, and Jay M. Decker, of Juneau, Alaska, of the first part, and the Peoples Wharf Company, a corporation, of the second part, Witnesseth: That the said parties of the first part for and in consideration of the sum of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, remise, release, and forever quitclaim unto the said party of the second part, and to their heirs and assigns all right, title, interest and estate, legal or equitable, to the party of the first part in and to the shore of Gastineaux Channel, which we may now or may hereafter possess by virtue of any law of the

United States or otherwise by reason of our now being the owners of Block K and L in the town of Juneau, as laid off and platted by G. W. Garside, and we do, as the owners of said lots, K and L., the same abutting upon Franklin Street in said city, the said street running along the line of ordinary high tide, being the shore of said Gastineaux Channel in said town of Juneau, and we do as such owners grant to the said party of the second part and forever quitclaim to them all litoral and riparian rights appurtenant thereto if any that we may now have or that may hereafter exist for any cause whatsoever in our favor, our heirs, administrators or assigns.

And we further hereby grant to the party of the second part the right to wharf out from our said premises southwesterly to deep water and maintain wharves and warehouses thereon for the benefit of trade and commerce and to own, possess and occupy the same forever by itself and its successors and assigns, except the warehouse building occupied by us and the land upon which said warehouse is situated.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

E. O. DECKER. [Seal]

J. M. DECKER. [Seal]

LIZZIE DECKER. [Seal]

Witnesses :

F. D. NOWELL.

J. F. MALONEY.

United States,  
District of Alaska,—ss.

I, F. D. Nowell, a Notary Public in and for the District of Alaska, residing at Juneau, in the above-named District, duly commissioned, sworn and qualified, do hereby certify that on this 20th day of February, 1897, before me personally appeared Edward O. Decker, and Lizzie Decker, his wife, and Jay Decker, to me known to be the individuals described in and who executed the within instrument, and acknowledged to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned. And the said Lizzie Decker, wife of the said Edward O. Decker, upon an examination by me separate and apart from her said husband, when the contents of said instrument were by me fully made known to her, and she was by me fully apprised of her rights and of the effects of signing the within instrument, did fully and voluntarily separate and apart from her said husband acknowledge the same, acknowledging that she did, voluntarily, of her own free will, and without the fear of or coercion from her said husband, execute the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this 20th day of February, 1897.

[Notarial Seal]

F. D. NOWELL,  
Notary Public in and for the District of Alaska.

Filed for record April 16th, 1907, at one o'clock P. M.

JOHN Y. OSTRANDER,  
District Recorder.

Book 12, p. 208.

United States of America,  
District of Alaska,—ss.

I hereby certify that the foregoing is a true, correct and complete transcript of the record and of the whole thereof, as the same appears of record in book 12 of Deeds at page 208, of the Records of the Juneau Recording District, District of Alaska.

Witness my hand and official seal this 24th day of April, 1906.

H. H. FOLSOM,  
(United States Commissioner)  
(Seal)

Recorder for Juneau Recording District, Alaska.

Mr. LYONS.—We now offer in evidence the Articles of Incorporation of the Peoples Wharf Company recorded in Book 10 of Deeds on page 121 of the Records of the Juneau Recording District, District of Alaska, dated 25th. of June, A. D. 1904.

Mr. BARNES.—We object to the Articles of Incorporation, if the Court please, on the ground that they are incompetent, and that at that time a corporation could not be made within the District of Alaska, and for the further reason, if the Court please, that it does not show the residence of any of the incorporators or the directors, nor does it show the By-Laws, if the Court please, what they should be, etc.,

reserving the right, if the Court please, to elaborate on this objection at the close of the case. I object to it on the ground that it is incompetent for those reasons, and, being incompetent, it is also immaterial.

Objection overruled.

Plaintiff excepts.

Mr. LYONS.—I presume the reading of this may be waived.

The COURT.—Yes.

The Articles of Incorporation received in evidence as Defendant's Exhibit "B," leave being granted by the Court to substitute a certain copy thereof, and reads as follows:

#### **Defendant's Exhibit "B."**

Whereas, Charles W. Young, Charles E. Tibbitts, Willis Thorp, and Joseph N. Harrison, of the town of Juneau, in the District of Alaska, have associated themselves together for the purposes of incorporation under the laws of the State of Oregon, they do therefore make, sign, and acknowledge these triplicate certificates in writing, which when filed, shall constitute the articles of Incorporation of "The Peoples Wharf Company.

Article I. The name of said Company shall be "The Peoples Wharf Company.

Article II. The term of existance of said Company shall be fifty years.

Article III. The objects for which said company is created are to acquire, construct and maintain wharves and warehouses and to import foreign and domestic coal and to vend the same.

Article IV. The principal office of said company shall be kept at the town of Juneau, in the District of Alaska, and the principal business of said company shall be carried on in said town of Juneau, District aforesaid.

Article V. The capital stock of said company shall be Twenty Thousand Dollars, divided into Four Thousand shares of Five Dollars each.

Article VI. The stock of said company shall be non-assessable.

Article VII. The corporators shall have power to make such prudential by-laws as they deem proper for the management of the affairs of the company, not inconsistent with the laws of the State of Oregon, for the purposes of carrying on of all kinds of business within the objects and purposes of said company.

In witness whereof the said Incorporators have hereunto set their hands and seals this 25th day of June, A. D. 1894.

CHARLES W. YOUNG. [L. S.]

CHARLES E. TIBBITTS, [L. S.]

WILLIS THORP. [L. S.]

JOSEPH W. HARRISON. [L. S.]

United States,  
District of Alaska,—ss.

I, John F. Maloney, a Notary Public in and for the District of Alaska, do hereby certify that Charles W. Young, John Tibbits, Willis Thorp and Joseph W. Harrison, who are personally known to me to be the same persons described in and who executed the with-

in triplicate Articles of Incorporation, appeared before me this 25th day of June, 1894, and personally acknowledged that they signed, sealed and delivered the same as their free and voluntary act and deed.

Witness my hand and notarial seal this the 25th, day of June, 1894.

[Notarial Seal]

J. F. MALONEY,  
Notary Public for Alaska.

Filed for record at 15 minutes past 9 o'clock A. M.  
June 28th, 1894.

H. W. MELLEEN,  
District Recorder.

Book 10 p. 101.

United States of America,  
District of Alaska,—ss.

I hereby certify that the foregoing is a true, correct and complete transcript of the record, and of the whole thereof, as the same appears of record in Book 100 of Deeds at 121 of the records of the Juneau Recording District, District of Alaska.

Witness my hand and official seal this 24th day of April, 1906.

[United States Commissioner Seal]

H. H. FOLSOM,  
Recorder for Juneau Recording District, Alaska.

The *deft* corporation offered in evidence a deed from the *Peoples Wharf Company*, a corporation, to John J. Waterbury and T. Jefferson Coolidge, Jr., to the introduction of which *plff* objected as follows:

[Crossed out in original:]

~~Mr. BARNES: We object.~~

~~Mr. LYONS: To make it clear, I will offer the whole Plat in evidence.~~

~~The COURT: I think that is very much better.~~

Mr. BARNES.—We object to this Deed because it is incompetent, if the Court please. It does not appear that The *Peoples Wharf Company* was a corporation and neither does it appear that any littoral rights were owned by The *Peoples Wharf Company*, or could be conveyed by the *Peoples Wharf Company*; and neither does there appear on the Deed any authority from the corporation, if any corporation existed, to convey the property at all.

Objection overruled without prejudice to a Motion to renew it.

Plaintiff excepts.

[Crossed out in original:]

Mr. LYONS: I will state to the Court that there is other property described in the Deed, but from the fact that the Plat shows all the property, it is difficult to segregate the portions that are not material, and for that reason I offer the whole Deed and Plat as evidence, and I will ask the permission of the Court, at this time, to offer a certified copy of the Deed and a tracing of the Plat.



Mr. BARNES: We object to the offering of the Plat, if the Court please, on the ground that it cannot change the description in the Deed, if there is a Deed, that was given by the original grantors of Decker to the Peoples Wharf Company; that the map offered by them attached to the Deed from The Peoples Wharf Company to John I. Waterbury and T. Jefferson Coolidge cannot change the description of the property

Deed and Map received in evidence as Defendant's Exhibit "C," No. 477-A, which Deed reads as follows:

**Defendant's Exhibit "C."**

This Indenture, made this 20th day of February, one thousand eight hundred and ninety-seven by and between the Peoples Wharf Company, a corporation duly organized under the laws of the State of Oregon by the laws of the United States made applicable to the Territory of Alaska, whose principal place of business is in the City of Juneau, Territory of Alaska, the party of the first part and

John I. Waterbury of New York and T. Jefferson Coolidge, Jr., of Boston, the parties of the second part, witnesseth:

That whereas the said party of the first part is a corporation duly incorporated and existing under and by virtue of the laws of the State of Oregon and in pursuance of the statute in such cases made and provided has acquired and is the owner of a certain wharf structure, warehouses thereon situated and is the owner of the land abutting upon the shore to which said wharf structure is appurtenant,

And whereas the Board of Directors of said corporation duly assembled duly passed the following resolution:—

Resolved that the President and Secretary under their hands and seals and the seal of this Company be and they are hereby ordered and instructed to sell and convey to John I. Waterbury of New York and T. Jefferson Coolidge, Jr., of Boston, by Deed of general Warranty, all the real estate and premises and wharf property thereon situated, now owned, claimed or possessed by this Company, together with possession, possessory, littoral or riparian right now owned, claimed, exercised or possessed by this Corporation in the District of Alaska,

And whereas the stockholders of said corporation at a meeting duly called thereafter duly ratified and confirmed said action of said Board of Directors in all respects.

Now, therefore, in pursuance of said resolution aforesaid and in consideration of the sum of One Dollar and other good and valuable considerations, paid by the said party of the second part, the receipt whereof is hereby acknowledged, the said party of the first part as grantor do remise, release, convey and confirm to the grantees their heirs, executors, administrators and assigns forever the said land, premises and appurtenances before mentioned in the District of Alaska as aforesaid, as follows: all its right, title and interest in and to the property mentioned and described in detail as follows:—

Beginning at Cor. No. 1 being North Easterly Cor. of Fisher and Tibbits old wharfsite about 1½ feet

North Easterly from the North East Cor. post of wharf whence Cor. No. 4 of the Exterior Boundary of Juneau Townsite Sur. No. 1 bears S. 29° 36' E. 170.02 ft. dist. Thence S. 26 17 E. 126 ft. more or less to line of Piles defining the South East boundary of said wharfsite, thence along said line of piles S. 55 30 W. 440 ft. to S. W. Cor. "Peoples Wharf" in deep water, thence along the S. W. side of said wharf N. 47 00 W. 108 ft, thence N. 28 00 W. 100 ft. to Cor. shed Engine House, thence along the S. W. side Coal Bunker *bl'd* No. 14 00 W. 125 ft. thence N. 76 00 E. along the N. W. end Coal Bunker bld'g, 24 ft, to N. E. Cor. Coal Bunker bldg., thence N. 14 00 W. 352 ft., thence N. 48 30 W. 38 ft. to cor. No. 7 Sur. No. 1 Exterior boundary Survey Juneau Townsite thence along the meander line Juneau Townsite S. 83 04 E. 44 ft. thence S. 14 00 E. 368 ft. to N. W. cor, warehouse, thence N. 76 00 E. 32 ft. to N. E. Cor. warehouse, thence S. 14 00 E. 80 ft. to S. E. cor. warehouse thence S. 21 30 E. 122 ft. to N. W. side wharf thence N. 51 30 E. 130 ft. thence E. 9 ft. thence N. 51 30 E. 275 ft. to the place of beginning

Courses expressed from the true meridian magnetic Var. 30 00 East of North.

For a more particular illustration of the foregoing description reference is hereby made to the map or plat of the said premises which is hereto attached and made a part of this description and marked "A," said property hereby conveyed being marked on said map "Peoples Wharf" and extending southerly from

Seward Street to deep water, in the waters of Gastineaux Channel, and from blocks "K" and "L" southwesterly to deep water in said channel, all being used in aid of trade and commerce.

Together with all and singular the possession, possessory rights and riparian rights connected therewith and appurtenant thereto with the right to wharf, build and construct wharves and warehouses over and across the same and possess, own and use and occupy the same and all of the waters of Gastineaux Channel, on and to the westward, southward and eastward thereof as fully as now are owned, claimed or possessed by the party of the first part with the same rights of egress and ingress thereto from Seward Street, Front Street and Franklin Street as is now possessed by the party of the first part.

In witness whereof the said party of the first part by resolution of its Board of Directors ratified by its stockholders has caused these presents to be subscribed by its President and Secretary and its corporate same and seal to be hereto affixed the day and year first above written.

THE PEOPLES WHARF COMPANY. [Seal]

By JOHN F. MALONEY, [Seal]

President.

[Corporate Seal]

Attest.

EMERY VALENTINE, [Seal]

Secretary.

Signed, sealed and delivered in the presence of

T. J. HUMES.

EDWIN GOODALL.

United States,  
District of Alaska,—ss.

Be it remembered that on this the 20th day of February, 1897, before me, F. D. Nowell, a Notary Public in and for the District of Alaska aforesaid, duly commissioned as such, personally appeared J. F. Maloney known to me to be the president, and Emery Valentine personally known to me to be the secretary of the Peoples Wharf Company, the corporation that executed the within instrument and they and each of them acknowledged to me that such corporation executed the same and that they and each of them as the President and Secretary for and on

[Continuation of foregoing paper is omitted from the original certified Transcript of Record.—Clerk.]

*Deft* corporation offered in evidence a deed from John I. Waterbury and T. Jefferson Coolidge, Jr., to the Peoples Wharf Company, a corporation; to the introduction of which *plff* objected on the grounds, first, it is immaterial; second, it is incompetent.

Mr. LYONS.—We ask permission to substitute a certified copy of this Deed, together with a tracing of the map attached thereto.

Objection overruled without prejudice to a renewal and permission is given to substitute certified copy of Deed with a tracing of the map.

Plaintiff excepts.

INDIAN HOUSES

R

CELESTINE

Q

P

WHARF HOUSE

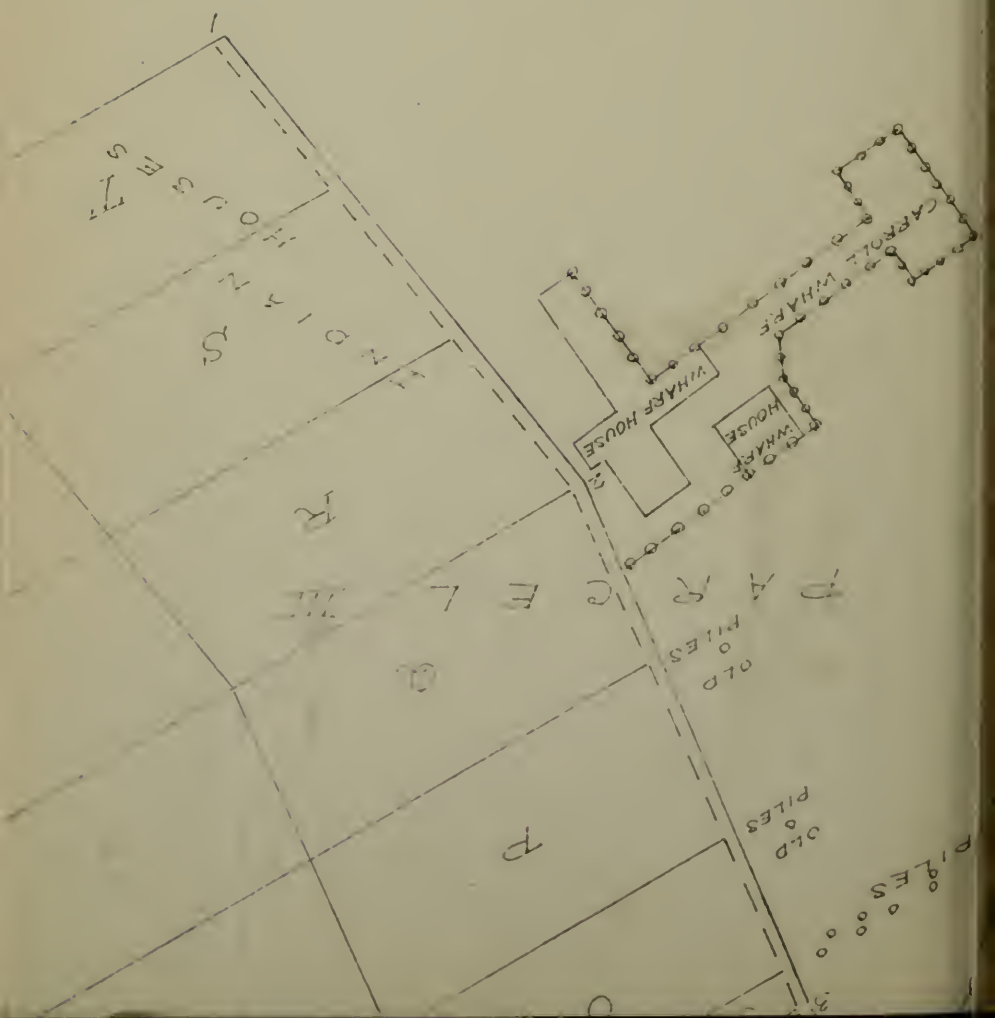
WHARF HOUSE

CARROLL WHARF

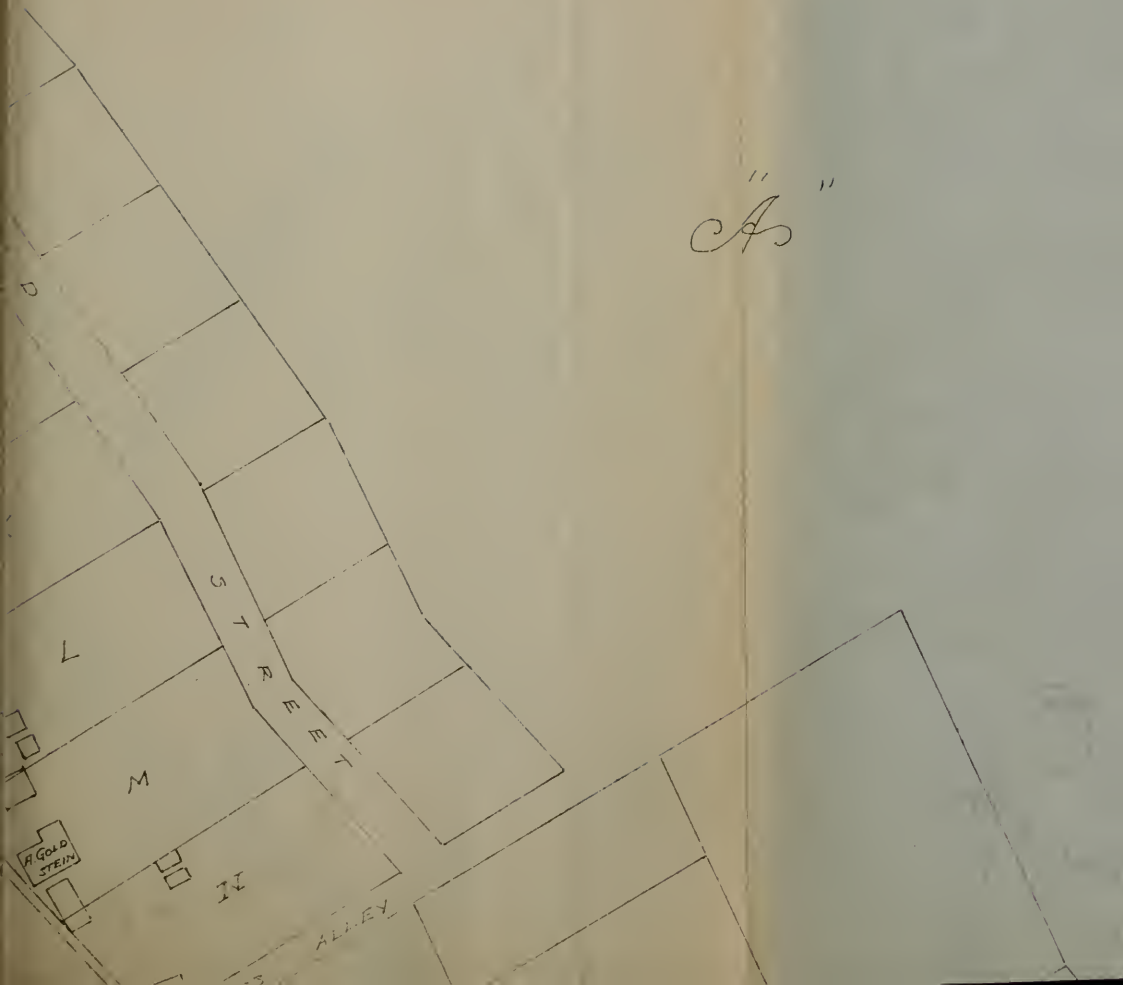
OLD PILES

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Deed and Map received in evidence as Defendant's Exh. "D" Case No. 477-A, and Deed reads as follows:

**Defendant's Exhibit "D" (Continued).**

This indenture, made this first day of April, Eighteen Hundred and Ninety-Eight, by and between John I. Waterbury, of Morristown, in the State of New Jersey, and T. Jefferson Coolidge, Jr., of the City of Boston, in the State of Massachusetts, parties of the first, and the Pacific Coast Company, a corporation duly organized and existing under the laws of the State of New Jersey, party of the second part:—

Whereas, the parties of the first part, acting on behalf of themselves and other persons, members of a reorganization committee, appointed, in accordance with a plan and agreement for reorganization of the Oregon Improvement Company, to carry said plan and agreement into effect, have heretofore, pursuant to, and in furtherance of such plan of reorganization, and thereunder for the benefit of the party of the second part, the company aforesaid, pursuant to such plan, acquired certain property, estate and rights in the property hereinafter described.

Now, Therefore, this Indenture, Witnesseth: That the parties of the first part in consideration of the premises and of the sum of Ten Dollars (\$10) to each of them in hand paid by the party of the second part, and other valuable consideration, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, assigned, transferred, quitclaimed and set

over, and do by these presents grant, bargain, sell, alien, remise, release, and confirm, assign, transfer, quitclaim and set over unto the said party of the second part, its successors and assigns forever.

All and singular, the property, estate, right, title and interest, claim and possession of the parties of the first part, in or to the following-described property situate, lying, and being at or near the town of Juneau, in the District of Alaska, that is to say:

Parcel 1. All that piece or parcel of land, and land under the water of Gastineaux Channel, together with the buildings, wharves, bridges and other superstructures thereon erected bounded and described as follows:

Beginning at a point on the northeasterly corner of the Fisher & Tibbetts old wharfsite about one and one-half feet northeasterly from the northeast corner post of said wharf, which said point of beginning is distant 170.2 feet on a course north 29 degrees, 36 minutes west from a point designated as a corner number Four of the exterior boundary of Juneau Townsite, survey No. 1; thence south 26 degrees, 17 minutes east 126 feet, more or less, to a line of piles defining the southeast boundary of wharfsite; thence along said line of piles south 55 degrees, 30 minutes west 440 feet to the southwest corner of the Peoples Wharf, so-called, in deep water thence along the southwesterly side of said wharf north 47 degrees, west 108 feet, thence still along the same north 28 degrees west 100 feet, to the corner of the Engine House shed, standing upon the premises hereby conveyed, thence along the same and along the south-

westerly side of Coal Bunker building upon said premises, north 14 degrees west 125 feet, thence north 76 degrees, east along the northwesterly side of said Coal Bunkers building 24 feet to the northeast corner thereof, thence north 14 degrees, west 352 feet, thence north 48 degrees, 30 minutes west 38 feet to a point designated as corner No. 7 of the exterior boundary of the Juneau Townsite, Survey No. 1; thence along the meander line of the Juneau townsite south 83 degrees, 4 minutes, east 44 feet, thence south 14 degrees east 368 feet to northwest corner of a warehouse standing on the said premises; thence north 76 degrees, east 32 feet to the northeasterly corner of said warehouse, thence south 14 degrees, east 80 feet to the southeasterly corner of said warehouse, thence south 21 degrees, 30 minutes, east 122 feet to the northwesterly side of the wharf standing upon said premises; thence north 51 degrees, 30 minutes east 130 feet, thence due east 9 feet, thence north 51 degrees, 30 minutes, east 275 feet to the point or place of beginning. Be the said several dimensions more or less; Said course being expressed from the true meridian, allowing a magnetic variation of 30 degrees east of north; Being the same premises designated as Parcel 1, and colored yellow upon the annexed plan or survey thereof marked "A," and hereby made a part of this deed and description, and the wharf known as the "Peoples Wharf," standing upon said premises, or some part thereof.

Parcel II. All that piece or parcel of land, and land under the waters of the Gastineaux Channel aforesaid, together with the buildings, wharves,

bridges and other superstructures and improvements thereon erected, bounded and described as follows:

Beginning at a point designated as corner No. 8 of the exterior boundary of Juneau townsite, survey No. 1, thence north 57 degrees, 4 minutes east 30 feet, thence south 31 degrees, 15 minutes, east 320 feet, thence along the northeast side of the lumber warehouses standing upon the premises hereby conveyed, north 67 degrees, 45 minutes east 100 feet to the southwest side of Decker Brothers' wharf, thence along the line of division between the same and the premises hereby conveyed, south 14 degrees, east 128 feet to the outer edge of the wharf standing upon the premises hereby conveyed, known as the Juneau City Wharf, thence along the same south 75 degrees, 45 minutes, west 272 feet, thence still along the same north 1 degree, 30 minutes, west, 168 feet, thence north 75 degrees, east 33 feet, thence north 8 degrees, 45 minutes, west 20 feet, thence north 29 degrees, west 172 feet, thence north 44 degrees, west 50 feet, to the northwesterly side of Block F., and the southeast side of First Street, thence along the same north 46 degrees, east 50 feet to the southwesterly side of Main Street, or the same produced, thence along the same and the northeast of block F. aforesaid, south 44 degrees, east  $9 \frac{4}{10}$  feet to point or place of beginning: Be the said several dimensions more or less, and the aforesaid courses being expressed from the true meridian, allowing a magnetic variation of 30 degrees east of north, and the wharf known as the "Juneau City Wharf," being situated on said Parcel II, or some part thereof.

Parcel III. All that piece or parcel of land, and land under water of the Gastineaux Channel aforesaid, together with the buildings, wharves, bridges and other superstructures thereon erected, described as follows:

The center line thereof is marked by a blazed tree and notice, and a large boulder near low water mark in line south, 25 degrees west. Said premises are bounded and described as follows: Beginning at a stake and mound of stone, thence North 25 degrees, east 600 feet, thence south 65 degrees east 600 feet, thence south 25 degrees, west 600 feet to a stake and mound of stone at low water mark, thence north 15 degrees, west, 600 feet along the water line to the point or place of beginning; the above courses being magnetic as the needle points: the wharf known as the Murry and Carroll, or the Carrol and Murry wharf, being situate upon said Parcel III, or some part thereof: intending hereby to include in the above-described premises, all of the premises more particularly mentioned and described in the several instruments respectively, recorded in the office of the recorder of the Juneau Recording District, at said Juneau, Alaska, in volume "A" at page 27, and at page 144, and in volume "B" at page 244, of said records: Said Parcels II and III, being more particularly designated as parcels II and III, respectively, and colored red, upon the aforesaid annexed plan or survey, marked "A," hereby made a part of this deed and description, and said parcel II and III being the same premises conveyed to the parties

of the first part by James Carroll and D. H. Carroll, his wife, and Ed. C. Hughes, by deed dated March 13, 1897, and recorded in the office of the aforesaid recorded April 13, 1897, in Book 12 of Deeds, on pages 18 to 200 inclusive.

And also all right of way of the parties of the first part, their servants and licensees, for ingress and egress to, from and upon the above-described premises, and every part thereof, together with all and singular the tenements, hereditaments and appurtenances, and all rights, privileges and franchises, including all riparian, littoral and possessory rights incident, appertaining or appendant thereto, or usually had and enjoyed therewith.

And also all and singular, the estate, rights, title and interest, claim and demand, possession, use and occupation of whatsoever name or nature, which the parties of the first part now have, or to which now or hereafter they might become entitled by virtue of any present estate or right to the shore and waters and the land under the waters, of the Gastineaux Channel aforesaid, or any part thereof; including the right to enter, occupy, pre-empt, reclaim, use or improve the same, or any part thereof, or to erect, construct, extend or maintain docks, wharves, moorings, approaches, causeways, bridges, warehouses or any other superstructures thereon.

And also, all and singular, the estate, right, title, interest, claim, possession and demand of whatsoever name or nature, which the parties of the first part now have, or which they may or might hereafter acquire under and by virtue of the following deeds, that is to

say: Three certain deeds to the parties of the first part: The first thereof made by Mary K. Griffin, dated May 12, 1897, and recorded in the office of said Recorder June 19th, 1897, in Book 12 of Deeds, at pages 272 and 273; the second made by Frank Starr, dated April 16, 1897, and recorded in the office of said recorder April 17th, 1897, in Book 12 of Deeds at page 211; The third made by Frank W. Griffin and Sarah E. Murray, dated March 20th, 1897, and recorded in the office of said recorder April 13, 1897, in Book 12 of Deeds, pages 201 and 202; And also seven certain deeds, to the Peoples Wharf Company as follows; The first: made by Charles W. Young, dated and recorded March 23rd, 1897, in the office of said recorder in Book 12 of Deeds, at pages 131 and 132; the second: made by F. W. Young and J. F. Maloney dated and recorded March 23d, 1897, in the office of said recorder, in Book 12 of Deeds at pages 130 and 131. The third made by Emery Valentine and Katherine, his wife, dated February 20th, 1897, and recorded in the office of said recorder April 16th, 1897, in Book 12 of Deeds, at page 209; The fourth: made by Frank Young and J. F. Maloney, dated February 20th, 1897, and recorded in the office of said recorder April 16, 1897, in Book 12 of Deeds, at page 206. The fifth: made by Edward O. Decker, and Lizzie, his wife, and Jay Decker, dated February 20th, 1897, and recorded in the office of said recorder April 16, 1897 in book 12 of Deeds at page 208. The sixth: made by James P. Jorgenson and Lizzie, his wife, dated February 20th, 1897, and recorded in the office of said recorder April 16, 1897, in Book 12 of

Deeds, at page 207. The seventh: made by Charles W. Young, dated February 20th, 1897, and recorded in the office of said recorder, April 16th, 1897, in book 12 of Deeds, at page 205.

To have and to hold, all and singular, the above described premises, and every part thereof, together with the appurtenances to the said party of the second part, its successors and assigns forever.

And said parties of the first part hereby constitute and appoint the party of the second part their true and lawful attorney irrevocable, for them, and in their name place and stead, but at its own proper costs and charges, and to its *and benefit*, to apply for, receive and hold any patent, grant, or deed, to which the parties of the first part may now, or hereafter, might be entitled to receive by virtue of any estate or right, possession or improvements above granted, giving their said attorney full power to do everything whatsoever, requisite and necessary to be done in the premises, as fully as they, the said parties of the first part, could so, if personally present, with *full of* substitution and revocation, hereby ratifying and confirming all that their said attorney, or his substitute shall lawfully do or cause to be done.

Where the contrary is not expressed, the terms "parties of the first part" herein includes their respective heirs, executors, administrators and assigns, and the term "party of the second part" includes its successors and assigns. It is expressly stipulated, that no covenant by the parties of the first part shall be implied herein.



In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOHN I. WATERBURY (Seal)

T. JEFFERSON COOLIDGE (Seal)

State of New York,  
County of New York,—ss.

I, Samuel F. Jarvis Jr. do hereby certify that on this twelfth day of April, 1898, personally appeared before me T. Jefferon Coolidge Jr., to me personally known to be one of the individuals described in and who executed the within instrument and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the purposes and uses therein mentioned.

Given under my hand and official seal this twelfth day of April, A. D. 1898.

(Seal) SAMUEL F. JARVIS JR.

Notary Public for New York County.

State of New York,  
City and County of New York,—ss.

I, Samuel F. Jarvis Jr., do hereby certify that on this twelfth day of April 1898, personally appeared before me John I. Waterbury, to me personally known to be one of the individuals described in and who executed the within instrument, and acknowledged that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Given under my hand and official seal this tenth day of April, A. D. 1898.

(Seal)

SAMUEL F. JARVIS JR.

State of New York,  
County of New York,—ss.

I, William Sohmer, Clerk of the County of New York, and also Clerk for the Supreme Court for the said County, the same being a Court of Record do hereby certify, That Samuel F. Jarvis Jr., whose name is subscribed to the certificate of the proof of acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof and acknowledgment, a Notary Public in and for said County, duly commissioned and sworn and authorized by the laws of said State to take acknowledgements and proofs of deeds or conveyances for land, tenements or hereditaments in said State of New York. And further that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said certificate of proof or acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 22d day of June, 1898.

(Seal)

WM. SOHMER,

Clerk.

Filed for record at 12:20 M. July 5, 1898.

NORMAN E. MALCOLM,

Recorder.

United States of America,  
District of Alaska,—ss.

I hereby certify that the foregoing is a true, correct and complete transcript of the record, and of the whole thereof, as the same appears of record in Book 14 of Deeds at 499 et seq of the records of the Juneau Recording District, District of Alaska.

Witness my hand and official seal this 24th day of April, 1906.

(Commissioner's Seal) H. H. FOLSOM,  
Recorder for Juneau Recording District, Alaska.

Mr. LYONS.—The pleadings admit that we are the lessees; the only other question now is as to the value of the improvements that we have constructed on the ground. We allege that this property and all of it is worth \$30,000 and the plaintiff in reply denies that the property on this particular frontage is worth more than \$1500. I don't know whether the Court considers this a material issue in this matter.

[Crossed out in original:]

~~The COURT.—I don't see how it is material what the value of it is.~~

~~Mr. LYONS.—I don't see exactly see that it is myself, only it might be *amterial* for this purpose. If the evidence should show that the plaintiff has waited these many years and allowed this large expenditure to be incurred, the Court might consider that question.~~

The COURT.—On the question of laches, you mean?

Mr. LYONS.—Yes.

[Crossed out in original:]

~~Mr. BARNES.—We object to it because it is immaterial and tends to proce no issue raised by the pleadings, the allegation of the Complaint being that the premises abutted upon the mean high tide line of Gastineaux Channel, and it is not denied by the Answer.~~

~~Mr. LYONS.—As long as that objection goes in that is all I want, if your Honor please.~~

~~The COURT.—All right let it go as it is without a ruling.~~

### Testimony.

W. F. SWAN, a witness for the Defendant, being first duly sworn, on oath testified as follows:

#### Direct Examination.

Mr. LYONS.—Q. Where do you reside?

A. On the Pacific Coast wharf in Juneau, Alaska.

Q. What is your occupation?

A. Agent for the Pacific Coast Steamship Company, the Pacific Coast Company and the Alaska Express Company.

Q. How long have you held that position?

A. About two and a half years.

Q. Are you familiar with the property in controversy in this case?      A. Yes.

Q. Are you familiar with the Peoples Wharf Company—

(Testimony of W. F. Swan.)

Mr. BARNES.—We object to the question as assuming a fact to exist which is not in the evidence, and further that the Articles of Incorporation of the Peoples Wharf Company does not permit them to buy any land, neither does it permit them to sell any land, consequently they had no wharf.

Mr. LYONS.—I want to show the position of the wharf with reference to this property; in fact, to show there is an approach to this property and the wharf. I want also to show the structures on this property to which we hold a deed.

Mr. BARNES.—We object to it because there has been no purchase.

The COURT.—I will overrule the objection without prejudice to a motion to renew it later in the case on the theory that they had no right to buy.

Plaintiff excepts.

Mr. LYONS.—Q. I will ask you if you are familiar with that property?

A. Yes, I am familiar with the property that is owned by the Pacific Coast Company.

Q. I will ask you if you are familiar with this property in *front Block L* that is sued for?

Mr. BARNES.—We object to showing him the Map.

The COURT.—This is the Map offered in evidence.

Mr. LYONS.—I call your attention to Plaintiff's Exhibit "C" and ask you if you are familiar with the property indicated on that Plat? I will just ask him that question generally first.

(Testimony of W. F. Swan.)

Same objection as was offered to the objection of the map.

Objection overruled without prejudice to motion to renew.

Plaintiff excepts.

A. Yes, I am familiar with it. I understand it.

Mr. LYONS.—Q. Now with reference to that portion which is in front of Block L, the property described in the Plaintiff's Complaint—the water front property in front of Block L described,—what structures are owned there by the Pacific Coast Company?

A. Well, there is an old paint-shop and one structure known as the Blacksmith-shop, there is one float and the wharf known as the "Peoples Wharf," there is an approach from the Peoples' Wharf to front of Block L; that structure is also owned by the Pacific Coast Company.

Q. What is the value of all of these structures you have described?

Mr. BARNES.—To which we object on the ground that it is immaterial.

Objection overruled.

Plaintiff excepts.

A. About \$25,000.

Q. That includes, I understand, the Peoples Wharf. A. Yes, sir.

Mr. BARNES.—I move to strike it out because he did not qualify the witness to show that he had any knowledge of values.

(Testimony of W. F. Swan.)

Mr. LYONS.—Q. I will ask you if you know the value of the structures including the Peoples Wharf, in front of Block L, as you have described?

Mr. BARNES.—To which we object; it is the cost of constructing them; the same ruling that the Court made to our witness, that it must be the value of the business done, would apply. The true test is what it would cost, not what it is worth.

Mr. LYONS.—What we are offering this testimony for is to show, as your Honor has suggested, *is* the laches of the Plaintiff in allowing us to go on and spend all this money.

After argument.

The COURT.—I think the test is what the value of the premises is. Of course, if they were wiped out the site would be there, the location would be there, and they might again re-construct it. It is the value of the premises, not the structures themselves, however, they might stand. I think the question is admissible. I think you should qualify him first as to his knowledge of values in general.

Mr. LYONS.—Q. Are you familiar with the value of this property in front of Block L on which it stands?

Mr. BARNES.—To which we object. The ruling of the Court is the value of the ground.

Mr. LYONS.—I think we ought to be allowed to show what the value of that property is to us as it stands, not what the value of the structures are as *segrated* from the land.

(Testimony of W. F. Swan.)

The COURT.—The point for which you offer this testimony is to show the expenditure of money on this land which she, by her laches, has permitted you to go on and expend. Now the value of the land itself the value of the location I don't think enters into it. I think it is the value of the structures.

Defendant excepts.

Mr. LYONS.—Q. I will ask you what is the value of all the structures, if you are familiar with the values of all the structures, that have been described in front of Lot L, including the Peoples Wharf?

Mr. BARNES.—We object on the ground that it is immaterial and assumes a fact to exist which is not in the evidence, and the same objection as before, that the Peoples Wharf Company made no purchase.

Same ruling.

Plaintiff excepts.

A. Yes, sir.

Mr. LYONS.—Q. What is the present value of all the structures you have described?

Same objection as to the last question.

Same ruling.

Plaintiff excepts.

A. It would be at least \$18,000.

Cross-examination.

Mr. BARNES.—Q. What structures are down there at the Peoples Wharf. How much of it is in front of Block L?

A. I don't know until I go down and measure it.



(Testimony of W. F. Swan.)

Q. What is the value of that that is in front of Block L? A. It is worth about \$7,000.

Q. How do you arrive at it?

A. Well, by the original costs and improvements.

Q. What was the original costs and improvements? A. The original cost was \$7,000.

Q. How do you arrive at it?

A. I suppose that is what we paid for it.

Q. You suppose? A. Yes.

Q. You don't know anything about it?

A. I didn't pay for it.

Q. Do you know anything about it?

A. Yes.

Q. I ask you, how much was the cost?

A. \$7,000.

Q. Exactly \$7,000?

A. I don't know whether it was exactly \$7,000.

Q. How many feet of the wharf is there in front of Block L.?

A. I don't know that. It cost \$7,000.

Q. How do you know what cost that *if* you don't know the part that is in front of Block L?

A. That is the selling price given to me when I came to take charge of the property.

Q. That is the selling price?

A. That is what we bought it for.

Q. You paid \$7,000 for it? A. Yes, sir.

Q. Then you didn't erect the improvements yourselves?

(Testimony of W. F. Swan.)

The COURT.—Which do you mean, the Pacific Coast Steamship Company?

Mr. BARNES.—The Pacific Coast Steamship Company.

Mr. LYONS.—I don't think the witness has testified the Pacific Coast Steamship Company has bought it.

WITNESS.—No. They didn't own the property at all.

Mr. BARNES.—Now, I want to find out what the Pacific Coast Steamship Company paid for it.

A. They didn't pay anything for it.

Q. The Pacific Coast Steamship Company has been in possession of it for some time, haven't they?

A. They have it leased.

Q. They built this last building down there, didn't they?      A. They did not.

Q. Who did build it?

A. The Pacific Coast Company.

Q. You were the agent who built it?

A. Yes.

Q. You were warned not to build it?

A. No.

Q. Do you remember down here by the corner of the drug store, at McFarland's, when the stringers had been laid on the ground there and I asked you in words substantially to this effect: "Who is building that building down there," and you says "We are building it." I says to you "Don't you know you have no right to build it, that property belongs to

(Testimony of W. F. Swan.)

Mrs. Decker," and you says "We will build it anyhow"?

Mr. LYONS.—We object to that as not proper cross-examination.

Mr. BARNES.—I propose to show by this witness that before the last building was erected I told him not to erect it. I was the attorney for the plaintiff in this case and I told him not to erect it.

The COURT.—There is not any evidence here that he is agent for the Pacific Coast Company. He has testified he was agent for the Pacific Coast Steamship Company.

WITNESS.—And the Pacific Coast Company.

After Argument.

The COURT.—I don't think it is cross-examination. I sustain the objection.

Mr. BARNES.—Q. When were those buildings erected?

A. Well, I misunderstood you in regard to the buildings; I thought you were talking about this new building down by our office.

The COURT.—He asks you now when were the buildings on this property you have been testifying to; when were they erected?

A. I don't know.

Mr. BARNES.—Q. Don't you know when any of them were erected?

A. None except the approach.

Q. Do you know when the building now used as the Union Iron Works was erected?

(Testimony of W. F. Swan.)

A. No, sir.

Q. Do you know where the building that you say in your Answer belongs to the plaintiff down in front of Block L is?

Objected to by the defendant as immaterial.

Mr. BARNES.—I want to show if he knows the value of each individual structure.

The COURT.—Ask him that.

Mr. BARNES.—Q. What is the first building you know of immediately opposite the southeast corner of Block L which you say belongs—

The COURT.—Point out the buildings on there and ask him the value of them.

Mr. BARNES.—What building is that? (Points to Map.)

A. The building occupied by the Union Iron Works.

Q. What is the value of it, if you know?

A. \$1,000.

Q. What is the value of the next building, if you please?

A. I don't know.

Q. Do you know who that belongs to?

A. Yes.

Q. Who? A. It belongs to Mr. Decker.

Mr. LYONS.—We move to strike that out.

Mr. BARNES.—I don't want the value of that. This building immediately adjoining the Decker Brothers building. What is the value of that?

The COURT.—Ask him what building it is.

(Testimony of W. F. Swan.)

Q. Do you know the building immediately adjoining Decker Brothers on the west of that?

A. Yes.

Q. How much of that is opposite Block L?

A. I don't know.

Q. You don't know the value of that, do you? If you don't know how much of it is opposite Block L. you don't know the value of it opposite Block L. do you? A. No answer.

Q. Why do you hesitate? You are a book-keeper and man of business, why are you holding us here all this time? Answer that question. According to that Map there is none of it opposite Block L. is there? A. Yes. About one-half of it.

Q. How much is one-half of it worth?

A. About \$600.

Q. Will you kindly look at this line dividing Block L. and Block K. Do you swear that that line dividing Block L. and Block K. cuts in half this building immediately west of the Decker building?

A. No, sir.

Q. How much of it is opposite Block L.?

A. I would have to go measure it.

Q. You don't know, do you?

A. I don't know in feet.

Q. When you say it costs \$600, what is opposite Block L. you don't know anything about it, do you?

A. Yes, sir.

Q. What do you know about?

(Testimony of W. F. Swan.)

The COURT.—What is the value of the building itself, Mr. Swan?      A. No answer.

The COURT.—Oh, the exact value is not necessary. Your idea of it is what we are after.

A. About \$1,000.

Mr. BARNES.—Q. What part of it is opposite Block L.?      A. I told you I don't know.

Q. So you don't know what is the value of it opposite Block L.?

The COURT.—The approximate proportion.

A. I would say one-third of it.

Mr. BARNES.—Q. Now you say this wharf, the part that is marked Peoples Wharf, up to the line of Block L. cost \$7,000, did it?      A. How's that?

Q. You say this part of the Peoples Wharf that is abutting opposite Block L., you say it cost \$7,000 did it?      A. Yes, sir.

Q. How much did it all cost?

A. I don't know.

Q. How, if you know that that part cost \$7,000, is it that you don't know how much all of this cost opposite Block L.?

A. I know that it is worth that.

Q. We are not asking that; I ask you if you know how much it cost?

The COURT.—The value. You are not asking the cost. You are confusing the witness. If you mean what it cost to the Pacific Coast Company that is a different thing, if you know how much it cost to construct it. You don't know what the cost of

(Testimony of W. F. Swan.)

the construction of any of these buildings is do you? A. No, sir.

Mr. BARNES.—Q. There is a building immediately abutting on this building here of the Decker Brothers; was not this building that was immediately abutting on the Decker building, and not shown on the map, was not that building erected against the protest of the plaintiff in this case?

Mr. LYONS.—We object to that on the grounds that it is immaterial and not cross-examination.

The COURT.—It is not cross-examination.

Plaintiff excepts.

Mr. BARNES.—I am endeavoring to prove by this witness that the most important and valuable building that has been erected on that property was erected against the protest of the plaintiff in this case.

The COURT.—Do you wish to make him your witness for that purpose?

Mr. BARNES.—No, sir.

The COURT.—You cannot do it unless you make him your witness.

Defendant rests.

ELIZABETH DECKER, the plaintiff being recalled on rebuttal, testified as follows:

Direct Examination.

Mr. BARNES.—Q. Mrs. Decker, what has been your calling and occupation since you have been in Alaska?

Objected to by the defendant as not rebuttal.

(Testimony of Elizabeth Decker.)

The COURT.—What is the purpose of it? To show the reason why she did not bring this action before?

Mr. BARNES.—Yes, and to show the reason why she stood by and saw these expenses incurred.

Mr. LYONS.—We object to any testimony in support of Paragraph 2nd. of the Reply for the reason that if true literally and in spirit it is absolutely no defense to the laches in this case; it is no defense; it does not show why she executed the deed or that she was misled to sign the deed; it does not show any misrepresentation whatever. It merely shows that she was a housewife and not advised in business matters. It is absolutely incompetent and immaterial to sustain any proof that could be a defense, or could be a reason, a special reason, for her not bringing this suit a long time ago and we object to it for that reason.

Mr. BARNES.—It is simply to show the reason why she stood by and saw this work done and did not bring this action.

The COURT.—I will sustain the objection.

Mr. BARNES.—I offer now to prove, if the Court please, that the plaintiff in this case here, at all times in regard to her business has relied upon the advice of hired counsel and that none of them until the year last past has informed her of any of her rights herein, or offered to make that proof.

Mr. LYONS.—We object to the offer for the reason that it is incompetent, irrelevant and immaterial



(Testimony of Elizabeth Decker.)

and the pleadings do not show that the plaintiff called the attention of counsel to any alleged rights which she claimed in the premises in controversy, nor does she say that she was ignorant of what constitutes laches in her Reply, which simply states that she was ignorant of business methods and such statement does not justify her laches as shown in this case.

Objection sustained.

Plaintiff excepts.

Mr. BARNES.—Q. How much of the time, Mrs. Decker, since you have been in Alaska, how much of the time since 1893—I will change the question.

Objected to by counsel for the defendant as incompetent, irrelevant and immaterial and not rebuttal.

The COURT.—You have not got the question finished.

Mr. BARNES.—Q. How much of the time, Mrs. Decker, since October, 1893, up to the commencement of this suit, had you been a married woman?

Objected to by counsel for the defendant as incompetent, irrelevant and immaterial and not rebuttal and does not tend to sustain any of the issues raised by the Reply.

Objection overruled.

Mr. BARNES.—Q. How much of the time since October, 1893, up to 1895 have you been a married woman?

A. I have been a married woman since '92.

Q. Up to when? A. Until 1899.

Q. When did your husband die? A. 1899.

(Testimony of Elizabeth Decker.)

Q. And then how long since that time have you been a married woman, when you were married the second time?      A. In 1902.

Q. And when were you divorced then?

Objected to by counsel for the defendant as not rebuttal.

I will admit it.

Mr. BARNES.—Q. When were you divorced?

A. In 1903.

Q. Last year, wasn't it?

Objected to by counsel for the defendant as leading.

A. Oh, in 1902 it was. I never looked it up. I forget.

Q. I say, what year was it you were divorced?

A. I don't remember.

Cross-examination.

Mr. LYONS.—Q. You are not married now, are you, Mrs. Decker?      A. No, sir, I am not.

The COURT.—Insert in the record that the defendant renews his objections, and motions to strike heretofore made during the trial was taken under advisement; the plaintiff also renews her objections to the admission of evidence, and renews her motions to strike heretofore made, and the Court takes those under advisement.

**Plaintiff's Objection, Exceptions, Etc.**

Which objections and motions of plaintiff were by the Court overruled and *plff* duly excepted.

*Plff* duly excepted to the decree herein.

*Plff* duly excepted to the ruling of the Court in refusing to make the findings Nos. I, II, III, IV, and VI requested by *plff*.

*Plff* duly excepted to the ruling of the Court in refusing to find as conclusions of law Nos. III, IV, V, and VI as requested by *plff*.

*Plff* duly excepted to the ruling of the Court in refusing to amend findings of fact Nos. II, III, V, and VI, as requested by *plff*.

*Plff* duly excepted to finding No. III made by the Court.

*Plff* duly excepted to finding No. IV made by the Court.

*Plff* duly excepted to the finding that *deft.* corporation is "not the real party in interest" in finding No. V.

*Plff* duly excepted to each of the conclusions of law made by the Court.

Plaintiff excepts to the sufficiency of the evidence to support the finding that the *plff* and E. O. Decker and J. M. Decker conveyed to the Peoples Wharf Company, a corporation, all their littoral and riparian rights immediately abutting on Blocks L and K or did convey all of their littoral or riparian rights which they or either of them might thereafter acquire to the tide lands of said *Gastanaux* Channel abutting

on said Blocks K and L., as is found in finding No. III.

Plaintiff objects to the sufficiency of the evidence to support the finding "that thereafter by mesne conveyances the Pacific Coast Company, a corporation, acquired all the rights, title and interest of said Peoples Wharf Company in and to all the littoral and riparian rights immediately upon said Blocks K and L., or that the Pacific Coast Steamship Company is the owner or entitled to the possession of the littoral and riparian rights abutting upon said Blocks K. and L. as is found in finding No. III.

Plaintiff excepts to the sufficiency of the evidence to support the finding that *plff* has no right, title or interest in or to any of the littoral or riparian rights or tide lands immediately abutting on and in front of said Blocks K and L as is found in finding No. IV.

Plaintiff excepts to the sufficiency of the evidence to support the findings that the Pacific Coast Steamship Company is not the real party in interest as is found in finding VII. *Plff* duly excepts to the refusal of the Court to make the findings requested by *plff*.

Plaintiff excepts to the sufficiency of the findings of fact to support the conclusions of law.

Plaintiff excepts to the sufficiency of the findings to support the decree.

These exceptions to the sufficiency of the findings were filed Jany. 7, 1908.

#### **Certificate to Bill of Exceptions.**

I, Royal A. Gunnison, Judge of the District Court for the District of Alaska, and the Judge who pre-

sided at the trial of the within-entitled cause, and being the Judge who rendered the decree dismissing said cause with costs, do hereby certify the within and foregoing bill of exceptions was duly presented to me for signature by counsel for *plff*, and for settlement and certification, within the time and in the manner prescribed by the rules and practice of this Court, to wit, on the 29th day of Oct., 1907, and that by the rules of this Court it is the duty of the Judge to set the time for settlement of all bills of exceptions and that in pursuance of that rule I fixed the 6th day of *Jany*, 1908, as the time for settling said bill and having examined the same and found it to be true and correct, I do now, within said time and R. A. G. ~~within the term of the Court at which said cause was tried and the said decree rendered,~~ allow, settle and certify the same, and order the same to be filed and to become a part of the record herein, and as a true and correct bill of exceptions.

And I do further certify that said bill of exceptions contains the evidence and all the evidence, as agreed upon by counsel and that said evidence was received by me at the trial of said suit or otherwise, and my ruling thereon, and all matters and things of which I took judicial notice or knowledge, and all the proceedings in said suit in the order of their occurrence, which could or did concern, *relate or effect* the decree herein, and that I found as facts, from the evidence that the originals of all the exhibits of both *plff* and *defts* to have been filed with or issued, as set out in

said bill of exceptions to have been filed with or issued by said officers so named in said bill of exceptions.

Witness my hand and the seal of this Court this 8<sup>th</sup> day of *Jan'y*, 1908.

ROYAL A. GUNNISON,

Trial Judge.

(Indorsed) No. 477-A. In the District Court for Alaska, Division No. 1, at Juneau. Elizabeth Decker, Plaintiff, vs. Pacific Coast Steamship Co. et al., Defendant. *Plffs* Proposed Bill of Exceptions. E. M. Barnes, Attorney for plff. Office: Juneau, Alaska, Rooms 1 and 2 Valentine Building. Chambers of U. S. Judge *Rec'd* Oct. 29, 1907, at Ketchikan. Answered. . . . . Filed *Jan* 8, 1908. C. C. Page, Clerk. By R. E. Robertson, Asst.

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*In the District Court for Alaska, Division No. 1, at Juneau.*

ELIZABETH DECKER,

vs.

THE PACIFIC COAST STEAMSHIP CO. (a Corporation), and JOHN JOHNSTON.

**Assignment of Errors.**

I.

The Court erred in sustaining the objection of the *defts* to the question "Mrs. Decker, I *w*would ask you how much, if any, you have been damaged by the maintainence of those buildings on that property, by the Pacific Coast Steamship Company, as described in the answer?"

II.

The Court erred in sustaining the objection of *deft* to the question "Have you some knowledge, Mrs. Decker, of the amount of freight that you would probably be able to handle over your wharf, provided you had a wharf there?"

III.

The Court erred in sustaining the *defts* objection to *plffs* question "Do you know, generally, Mrs. Decker, from common repute and what you see in the newspapers, that the charges of these wharf companies here in Juneau are excessive?"

IV.

The Court erred in admitting in evidence by *deft*, against the objections of *plff* the deed dated Ap'l 20th, 1897, between Lizzie Decker, wife of E. O. Decker, and Jay M. Decker to the Peoples Wharf Company, a corporation.

V.

The Court erred in admitting in evidence by the *deft*, against the objections of *plff*, the articles of incorporation of the Peoples Wharf Company.

VI.

The Court erred in admitting in evidence by the *deft* against the objection of *plff*, a deed from the Peoples Wharf Company, a corporation, to John J. Waterbury and T. Jefferson Coolidge, Jr.

VII.

The Court erred in admitting in evidence by *deft*, against the objection of *plff*, a deed from John J. Waterbury and T. Jefferson Coolidge, Jr., to the Peoples Wharf Company, a corporation.

## VIII.

The Court erred in permitting the *defts* witness Swan to answer for *deft* against the objection of *plff* the question "Are you familiar with the Peoples Wharf Company.

## IX.

The Court erred in permitting the *defts* witness Swan to, against the objection of *plff*, answer the question "Q. I will ask you if you are familiar with this property in front of Block L, that is sued for?"

## X.

The Court erred in permitting *defts* witness Swan, over the objection of *plff*, to answer the question "What is the value of those structures you have described?"

## XI.

The Court erred in permitting the *defts* witness Swan, over the objection of *plff*, to answer the question "I will ask you what is the value of all the structures, that have been described in front of Lot L, including the Peoples Wharf.

## XII.

The Court erred in permitting the *defts* witness Swan over the objection of *plff* to answer the question "I will ask you what is the value of all the structures, that have been described in front of Lot L, including the Peoples Wharf?"

## XIII.

The Court erred in permitting *defts* witness Swan to answer, over the objection of *plff*, "What is the



present value of all the structures you have described?"

XIV.

The Court erred in sustaining the *defts* objection to the question asked the witness Swan by *plff* asked the witness Swan by *plff* "There is a building immediately abutting on the Decker building and not shown on the map, was not that building erected against the protest of the *plff* in this case?"

XV.

The Court erred *in sustainong* in sustaining the *defts* objection to the offer made by *plff* to prove that the *plff* in this case at all times in regard to her business has relied upon the advice of hired counsel and that none of them until the present year last *passed* has informed her of any of her rights herein.

XVI.

The Court erred in overruling the objections and motions of *plff* renewed by *plff* under the permission of the Court at the close of the testimony.

XVII.

The Court erred in rendering the decree herein.

XVIII.

The Court erred in refusing to make findings I, II, III, IV and *Vi* requested by *plff*.

XIX.

The Court erred in refusing to find as conclusions of law findings Nos. III, IV, V, and *Vi* as requested by *plff*.

XX.

The Court erred in making findings No. III.

## XXI.

The Court erred in making finding No. IV.

## XXII.

The Court erred in making the finding that *deft* corporation is not the real party in interest.

## XXIII.

The Court erred in its conclusions of law herein.

E. M. BARNES,

*Atty for plff*

(Indorsed) No. 477-A. In the District Court for Alaska, Division No. 1, at Juneau. Elizabeth Decker, plaintiff, vs. Pacific Coast Steamship Co., a corporation, et al, defendant. Assignment of errors. Filed Jan 9, 1908, C. C. Page, Clerk, by A. W. Fox, Deputy. E. M. Barnes, attorney for *plff* Office: Juneau, Alaska, rooms 1 and 2, Valentine Building.

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*In the District Court for Alaska, Division No. 1, at Juneau.*

No. 477-A.

ELIZABETH DECKER

vs.

PACIFIC COAST STEAMSHIP CO. (a Corporation), and JOHN JOHNSTON.

**Petition for Appeal.**

The above named *plff* considering herself aggrieved by the order and decree made and entered in the above entitled suit on the day of Jan'y, 1907, wherein and whereby it was adjudged and decreed that the suit of *plff* be dismissed and decreed that the

*deft* corporation have judgement against the said named plaintiff for the costs of this suit, amounting to the sum of thirty-four & 80/100 dollars, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the assignment of errors herein, and prays that this, her petition for appeal, *may allowed* and that a transcript of the records, papers and proceedings upon which said decree was made, duly authenticated, may be sent up to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, Cal.

Juneau, *Jan*y 8, 1908.

E. M. BARNES,  
Attorney for *plff*.

(Indorsed) No. 477-A. In the District Court of Alaska, Division No. 1, at Juneau. Elizabeth Decker vs. Pacific Coast Steamship Company, a corporation, et al. Petition for appeal. Filed *Jan* 9, 1908, C. C. Page, Clerk, A. W. Fox, Deputy. E. M. Barnes, attorney for *plff*. Office: Juneau, Alaska, rooms 1 and 2 Valentine Building.

*In the District Court for Alaska, Division No. 1, at  
Juneau.*

No. 477-A.

ELIZABETH DECKER

vs.

PACIFIC COAST STEAMSHIP CO. (a Corpora-  
tion), and JOHN JOHNSTON,

Defts.

**Order Allowing Appeal.**

At a stated term, to wit, the *Dec* term, 1907, of the District Court for the District of Alaska, Division Number one at Juneau, held in the courtroom of said court at the city of Juneau, Alaska, on the 8th day of *Jany* 1908, present, the Honorable Royal A. Gunnison, Judge; on motion of E. M. Barnes, attorney for the *plff*, it is hereby ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the decree heretofore allowed and entered herein, be and the same is hereby allowed and that a certified transcript of the record and all proceedings herein be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California.

It is further ordered that the bond on appeal be fixed at the sum of Five hundred dollars, the same to act as a supersedeas bond, and also as a bond for costs and damages on appeal.

Dated Juneau, Alaska. In open court this 9th day of Jan'y, 1908.

ROYAL A. GUNNISON,  
Judge.

(Indorsed) No. 477-A. In the District Court for Alaska, Division No. 1, at Juneau. Elizabeth Decker, plaintiff, vs. Pacific Coast Steamship Co., a corporation, et al, *defendant*. Order allowing appeal. Filed Jan 9, 1908, C. C. Page, Clerk, by A. W. Fox, Deputy. E. M. Barnes, attorney for *plff*, office: Juneau, Alaska, rooms 1 and 2 Valentine Building.

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*In the District Court for Alaska, Division No. 1, at  
Juneau.*

No. 477-A.

ELIZABETH DECKER

vs.

PACIFIC COAST STEAMSHIP CO. (a Corporation), and JOHN JOHNSTON.

**Notice of Appeal.**

To Pacific Coast Steamship Co., a corporation, defendant, and to Shackleford & Lyons, its attorneys,

You are hereby notified that the *plff* herein intends to and does hereby appeal from the final decree of the District Court for the District of Alaska, Division Number One, made and entered on the 11th day of *Jany*, 1907, and from the whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California.

Dated Juneau, Alaska, this 9th day of *Jany*, 1908.

E. M. BARNES,

Attorney for

Due service of a copy of the within is admitted this 9 day of *Jany*, 1908.

SHACKLEFORD & LYONS,

Attorney for defendant corporation.

(Indorsed) No. 447. In the District Court for Alaska, Division No. 1, at Juneau. Elizabeth Decker, plaintiff, vs. Pacific Coast Steamship Co., a corporation, et al, defendant. Notice of appeal. Filed *Jan* 9, 1908, C. C. Page, Clerk, by A. W. Fox, Deputy. E. M. Barnes, attorney for appellant. Office: Juneau, Alaska, rooms 1 and 2 Valentine Building.

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*In the District Court for Alaska, Division No. 1,  
at Juneau.*

No. 477-A.

ELIZABETH DECKER

vs.

PACIFIC COAST STEAMSHIP COMPANY (a  
Corporation), and JOHN JOHNSTON,  
. Defts.

**Bond on Appeal.**

Know all men by these presents that we, Elizabeth Decker, as principal and George F. Miller as surety are held and firmly bound unto the Pacific Coast Steamship Company, a corporation, in the penal sum of five hundred dollars to be paid to the said Pacific Coast Steamship Company, corporation or to its as-

signs, for which payment well and truly to be *amde* we bind ourselves, our and each of our heirs, executors, administrators and assigns, jointly and severally firmly by these presents. Signed and sealed with our seals, and dated this 15th day of January, 1908.

Whereas, lately at a session of the District Court for the District of Alaska, Division Number One, at Juneau, in a suit pending between said Elizabeth Decker as plaintiff and said Pacific Coast Steamship Company, corporation, and John Johnston as *defts*, the said Pacific Coast Steamship Company *corporation* recovered a decree of dismissal of said suit, and the said Elizabeth Decker having obtained from said Court an order allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse said decree, and a citation directed to said corporation has issued, citing and admonishing it to appear and be at the United States Circuit Court of Appeals for the 9th Circuit, to be held at the City of San Francisco, State of California, Now the condition of the above obligation is such, that if the said Elizabeth Decker shall prosecute her said appeal to effect and shall answer all damages and costs that may be awarded against her if she fails to make her appeal good, then the above obligation is to be void, otherwise to remain in full force, virtue and effect.

ELIZABETH DECKER. (Seal)

GEORGE F. MILLER, (Seal)

United States of America,  
District of Alaska,—ss.

I, George F. Miller, the surety mentioned in the foregoing obligation, being first duly sworn according to law, depose and say, that I am a householder and resident within the District of Alaska; I am in all respects qualified to become surety on appeal in said District; that I am worth the sum of one thousand dollars over and above all my just debts and liabilities in *propert* situate within said District, exclusive of priperty exempt from execution and forced sale.

GEORGE F. MILLER.

Subscribed and sworn to before me, Jan'y 13th, 1908.

(Seal)

GUY McNAUGHTON,  
Notary Public for Alaska.

And I further certify that the within named parties duly acknowledged to me severally that they executed the said bond for the uses and purposes therein mentioned.

Witness my hand and seal this —— day of January, 1908.

(Seal)

GUY McNAUGHTON,  
Notary Public for Alaska.

The foregoing bond is hereby approved.

Dated January 27, 1908.

ROYAL A. GUNNISON,  
District Judge.



(Endorsed): No. 477-A. In the District Court for Alaska, Division No. 1, at Juneau. Elizabeth Decker, plaintiff, vs. Pacific Coast Steamship Co., et al., defendants. Bond on Appeal. Filed *Jan 27*, 1908. C. C. Page, Clerk. By A. W. Fox, Deputy. E. M. Barnes, Attorney for P<sup>l</sup>ff. Office: Juneau, Alaska. Rooms 1 and 2, Valentine Building.

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*In the District Court for Alaska, Division No. 1,  
at Juneau.*

No. 477.

ELIZABETH DECKER,

vs.

PACIFIC COAST STEAMSHIP COMPANY (a  
Corporation) and JOHN JOHNSTON,

**Citation (Original).**

The President of the United States of America to Pacific Coast Steamship Company, a Corporation, and to Shackelford & Lyons, its Attorney:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, State of California, within thirty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the District Court of the District of Alaska, Division Number One at Juneau, in the case wherein Elizabeth Decker is plaintiff and appellant and you are the defendant and respondent, to show cause if any there be, why the decree in the said appeal mentioned should not be corrected and

speedy justice should not be done to the parties in that behalf.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United *State* of America, this 8th day of *Jany* A. D. 1908, and of the Independence of the United States the one hundred and thirty-first.

ROYAL A. GUNNISON,  
Judge.

[Seal] Attest:

C. C. PAGE,  
Clerk.

By A. W. Fox,  
Deputy.

Due service of a copy of the within is admitted this 9th day of *Jany.*, 1908.

SHACKLEFORD & LYONS,  
Attorneys for Deft. Corporation.

[Endorsed]: No. 477-A. In the District Court for Alaska, Division No. 1, at Juneau. Elizabeth Decker, Plaintiff, vs. Pacific Coast Steamship Company, a Corporation et al., Defendant. Citation. Filed Jan. 9, 1908. C. C. Page, Clerk. By A. W. Fox, Deputy. E. M. Barnes, Attorney for Plff. & Appellant. Office: Juneau, Alaska. Rooms 1 and 2, Valentine Building.

*In the District Court for the District of Alaska, Division No. 1, at Juneau.*

No. 477-A.

ELIZABETH DECKER,

Plaintiff,

vs.

PACIFIC COAST STEAMSHIP COMPANY (a Corporation) and JOHN JOHNSTON,  
Defendants.

**Clerk's Certificate to Transcript of Record.**

I, C. C. Page, Clerk of the District Court for the District of Alaska, Division No. 1, do hereby certify that the foregoing and hereto annexed 96 pages of typewritten matter, numbered from 1 to 96, both inclusive, constitute a full, true and correct copy of the record and the whole thereof, as per plaintiff's and appellant's praecipe on file herein and made a part hereof, in cause No. 477-A, wherein Elizabeth Decker is plaintiff and appellant, and the Pacific Coast Steamship Company, a corporation, and John Johnston are defendants and appellees; that the same is as it appears of record and on file in my office; and that the said record is by virtue of the order of appeal and citation issued in this cause, and the return thereof in accordance therewith.

I do further certify that this transcript was prepared by me in my office and that the cost of preparation, examination and certificate, amounting to

Forty-two dollars and thirty-five cents (\$42.35) has been paid to me by counsel for the appellant.

In witness whereof I have hereunto set my hand and affixed the seal of this court at Juneau, Alaska, this 29th day of January, A. D. 1908.

[Seal]

C. C. PAGE,  
Clerk.

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[Endorsed]: No. 1564. United States Circuit Court of Appeals for the Ninth Circuit. Elizabeth Decker, Appellant, vs. The Pacific Coast Steamship Company (a Corporation), Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Division No. 1. Filed February 14, 1908.

F. D. MONCKTON,  
Clerk.